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Transcript of Isaac D. Leventon

Date: July 22, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Conducted on July 22, 2021

<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION</p> <p>4 In re § 5 HIGHLAND CAPITAL § Chapter 11 6 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 7 Debtor. § 8 UBS SECURITIES LLC AND § 9 UBS AG LONDON BRANCH, § 10 Plaintiffs, § 11 VS. § Adversary Proceeding 12 HIGHLAND CAPITAL § No. 21-03020-sgj 13 MANAGEMENT, L.P., § 14 Defendant. §</p> <p>15 HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION REDACTED</p> <p>18 Videotaped Deposition of 19 ISAAC D. LEVENTON 20 Dallas, Texas 21 Thursday, July 22, 2021 22 9:55 a.m.</p> <p>23 Job No.: 386785 24 Pages: 1 - 370 25 Reported by: Micheal A. Johnson, RDR, CRR</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS 3 UBS SECURITIES LLC AND 4 UBS AG LONDON BRANCH:</p> <p>5 Andrew B. Clubok 6 Sarah Tomkowiak (Via Zoom) 7 LATHAM & WATKINS LLP 8 555 Eleventh Street, N.W., Suite 1000 9 Washington, D.C. 20004 10 (202) 637-2200 11 andrew.clubok@lw.com 12 sarah.tomkowiak@lw.com</p> <p>13 Shannon E. McLaughlin 14 LATHAM & WATKINS LLP 15 885 Third Avenue 16 New York, New York 10022-4834 17 (212) 906-4612 18 shannon.mclaughlin@lw.com</p> <p>19 ON BEHALF OF DEFENDANT 20 HIGHLAND CAPITAL MANAGEMENT, L.P.:</p> <p>21 Robert J. Feinstein (Via Zoom) 22 PACHULSKI STANG ZIEHL & JONES LLP 23 780 Third Avenue, 34th Floor 24 New York, New York 10017-2024 25 (212) 561-7700 rfeinstein@pszjlaw.com</p> <p>ON BEHALF OF THE WITNESS:</p> <p>Frances A. Smith ROSS & SMITH, PC 700 N. Pearl Street, Suite 1610 Dallas, Texas 75201 (214) 377-7879 frances.smith@judithwross.com</p>
<p>1 Deposition of ISAAC D. LEVENTON, held at 2 the location of:</p> <p>3 Butler Snow LLP 4 2911 Turtle Creek Boulevard, Suite 1400 5 Dallas, Texas 75219 6 (469) 680-5500</p> <p>7 Pursuant to Notice, before Micheal A. 8 Johnson, Registered Diplomate Reporter and 9 Certified Realtime Reporter.</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 ON BEHALF OF THE WITNESS:</p> <p>3 Debra A. Dandeneau 4 Michelle Hartmann 5 BAKER & MCKENZIE, LLP 6 452 Fifth Avenue 7 New York, New York 10018 8 (212) 626-4875 9 debra.dandeneau@bakermckenzie.com 10 michelle.hartmann@bakermckenzie.com</p> <p>11 VIDEOGRAPHER: 12 Brian Krieger</p>

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<div>6</div> <div>1 DEPOSITION EXHIBITS ISAAC D. LEVENTON July 22, 2021</div> <div>2</div> <div>3 NUMBER DESCRIPTION MARKED</div> <div>4 Exhibit 67 04/13/2017 E-mail, Isaac 196 Leventon to Stephanie Vitiello UBSPROD4837680</div> <div>5</div> <div>6 Exhibit 68 05/24/2019 through 06/17/2020 274 E-mail Chain UBSPROD000095 - UBSPROD000096</div> <div>7</div> <div>8 Exhibit 69 UBS's First Request for 301 Production of Documents to Debtor Highland Capital Management, LP</div> <div>9</div> <div>10 Exhibit 70 08/06/2020 through 08/13/2020 309 E-mail Chain UBSPROD1611114 - UBSPROD1611119</div> <div>11</div> <div>12 Exhibit 71 07/18/2019 through 07/16/2020 329 E-mail Chain UBSPROD1754280 - UBSPROD1754282</div> <div>13</div> <div>14 Exhibit 72 08/05/2020 E-mail Chain 333 UBSPROD1706963 - UBSPROD1706964</div> <div>15</div> <div>16 Exhibit 73 08/21/2020 E-mail Chain, with 342 Attachment UBSPROD497100 - UBSPROD497103</div> <div>17</div> <div>18 Exhibit 74 01/28/2021 E-mail Chain, with 348 Attachment UBSPROD1659896 - UBSPROD1659900</div> <div>19</div> <div>20 Exhibit 75 12/02/2019 E-mail Chain 361 UBSPROD456218 - UBSPROD456219</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>8</div> <div>1 PROCEEDINGS</div> <div>2 THE VIDEOGRAPHER: Here begins disk No. 1</div> <div>3 in the videotaped deposition of Isaac Leventon.</div> <div>4 This is in the matter regarding Highland Capital</div> <div>5 Management, LP, specifically the matter of UBS</div> <div>6 Securities, LLC and UBS AG, London Branch versus</div> <div>7 Highland Capital Management, LP. This is in the</div> <div>8 United States Bankruptcy Court for the Northern</div> <div>9 District of Texas, Dallas Division, filed as case</div> <div>10 number 19-34054-SGJ11.</div> <div>11 Today's date is Thursday, July 22nd, 2021.</div> <div>12 The videographer today is Brian Krieger</div> <div>13 representing PlanetDepos. This video deposition</div> <div>14 is taking place at Butler Snow at 2911 Turtle</div> <div>15 Creek Boulevard in Dallas, Texas.</div> <div>16 If counsel would please identify</div> <div>17 themselves for the record and whom they represent.</div> <div>18 MR. CLUBOK: On behalf of UBS, Andrew</div> <div>19 Clubok of Latham & Watkins, LLP.</div> <div>20 MS. McLAUGHLIN: Shannon McLaughlin, also</div> <div>21 with Latham & Watkins.</div> <div>22 MS. SMITH: Frances Smith with Ross &</div> <div>23 Smith on behalf of Mr. Isaac Leventon.</div> <div>24 MS. HARTMANN: Michelle Hartmann, Baker</div> <div>25 McKenzie, on behalf of the witness as well.</div>

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<p>9</p> <p>1 MS. DANDENEAU: Debra Dandeneau from Baker</p> <p>2 McKenzie on behalf of Isaac Leventon.</p> <p>3 MR. FEINSTEIN: On the Zoom, Robert</p> <p>4 Feinstein of Pachulski Stang Ziehl & Jones,</p> <p>5 counsel to Highland Capital Management, LP.</p> <p>6 THE VIDEOGRAPHER: The court reporter</p> <p>7 today is Micheal Johnson representing PlanetDepos.</p> <p>8 If the court reporter would please swear in the</p> <p>9 witness.</p> <p>10 ISAAC D. LEVENTON,</p> <p>11 called as a witness, having been duly sworn by a</p> <p>12 Notary Public, was examined and testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Good morning. Please state your full</p> <p>17 name.</p> <p>18 A Isaac Daniel Leventon.</p> <p>19 Q And what's your home address?</p> <p>20 <-- HIGHLY CONFIDENTIAL</p> <p>21 --></p> <p>22 Q Roughly how long have you lived there?</p> <p>23 A Since 2013 or '14.</p> <p>24 Q What's your current business address?</p> <p>25 A 2515 McKinney Avenue.</p>	<p>11</p> <p>1 A Not personally.</p> <p>2 Q Have you been deposed before?</p> <p>3 A Yes.</p> <p>4 Q How many times, approximately?</p> <p>5 A Over ten.</p> <p>6 Q And were all of those matters in</p> <p>7 connection with your work with Highland Capital or</p> <p>8 an affiliated entity?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I believe so.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q When was the last time you were deposed,</p> <p>13 roughly?</p> <p>14 A I'm trying to recall. I believe it may</p> <p>15 have been early this year.</p> <p>16 Q Have you ever served as a corporate</p> <p>17 representative or as the equivalent state law</p> <p>18 nomenclature?</p> <p>19 A Yes.</p> <p>20 Q Roughly many times?</p> <p>21 A Most of the depositions I gave were in a</p> <p>22 corporate representative capacity. The majority</p> <p>23 of them.</p> <p>24 Q Who were you representing?</p> <p>25 A Depended on the case.</p>
<p>10</p> <p>1 Q You are an attorney authorized to practice</p> <p>2 law, correct?</p> <p>3 A Yes.</p> <p>4 Q In what states?</p> <p>5 A Texas.</p> <p>6 Q Just Texas?</p> <p>7 A I'm only barred in the state of Texas,</p> <p>8 yes.</p> <p>9 Q Where did you go to college?</p> <p>10 A Emory University.</p> <p>11 Q What year did you graduate?</p> <p>12 A 2001.</p> <p>13 Q What was your degree?</p> <p>14 A Political science.</p> <p>15 Q And where did you go to law school?</p> <p>16 A University of Texas School of Law.</p> <p>17 Q Where did -- when did you graduate?</p> <p>18 A 2005.</p> <p>19 Q Did you do something between college and</p> <p>20 law school?</p> <p>21 A Yes.</p> <p>22 Q What was that?</p> <p>23 A I worked for the Centers for Disease</p> <p>24 Control.</p> <p>25 Q Did you know Dr. Fauci?</p>	<p>12</p> <p>1 Q Can you identify as many entities as you</p> <p>2 can recall that you have served as a corporate</p> <p>3 representative for in a deposition?</p> <p>4 A The last one at the beginning of this</p> <p>5 year, I served as the corporate representative for</p> <p>6 the plaintiffs in the lawsuit against Celtic</p> <p>7 Pharma.</p> <p>8 Q Who were the plaintiffs?</p> <p>9 A You'd have to pull -- I don't recall the</p> <p>10 exact names of them. You'd have to look at the</p> <p>11 style of the case, but it was all of them.</p> <p>12 Q Okay. And in past depositions, try to</p> <p>13 identify as many entities as you can recall that</p> <p>14 you've served as corporate representatives for in</p> <p>15 deposition.</p> <p>16 A I really don't remember. I would have to</p> <p>17 look back at the records on that. I don't recall</p> <p>18 which ones.</p> <p>19 Q You can't -- other than this deposition</p> <p>20 where you served as the representative against</p> <p>21 Celtic Pharma, you can't recall a single other</p> <p>22 entity where you were designated as a corporate</p> <p>23 representative, as you sit here today?</p> <p>24 A There was a case related to the real</p> <p>25 estate fund a number of years back, but I don't</p>

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<p>13</p> <p>1 remember who I was representing as the witness in 2 that case. 3 Q So again, other than the deposition where 4 you served as the representative against the 5 Celtic Pharma, you cannot recall a single other 6 entity that you can identify where you were 7 designated as a corporate representative; is that 8 correct? 9 A First of all, it's Celtic, like -- spelled 10 like the basketball team. 11 Q Although apparently pronounced 12 differently. 13 A Correct. And now thinking about it 14 further, I represented Highland Capital 15 Management, LP, as their corporate representative 16 in the Crusader arbitration. 17 Q Other than that, can you identify any 18 other entity on whose behalf you've served as a 19 corporate representative in any testimony? 20 A No, not sitting here today. 21 Q In addition to your times being deposed as 22 a corporate representative, have you been deposed 23 in your individual capacity before today? 24 A Yes. 25 Q How many times, roughly?</p>	<p>15</p> <p>1 Q Had they been a client of yours before you 2 started working for them? 3 A No. 4 Q How did you come to be employed at 5 Highland Capital Management? 6 A Online application, interview. 7 Q Throughout the course of the deposition -- 8 I know there's lots of different -- some of the 9 entities have longer names, some of them have 10 things like LP. If I refer to Highland Capital 11 Management throughout the rest of this deposition 12 as HCM, will you understand it to be that entity? 13 A So when you say HCM, you're referring to 14 Highland Capital Management, LP, the debtor, 15 correct? 16 Q Correct. 17 A Okay. We can make that agreement. 18 Q Okay. Thank you. And who interviewed you 19 for your job at HCM? 20 A A number of people interviewed me. 21 Q Did you have an understanding as to who 22 was the final decision-maker? 23 A No, I didn't actually. 24 Q Who interviewed you? Identify the people 25 who interviewed you.</p>
<p>14</p> <p>1 A Maybe two or three. 2 Q Were those all in connection with your 3 work? 4 A Yes. 5 Q Okay. And what were the circumstances of 6 those depositions? 7 A I honestly don't remember. I honestly 8 don't recall. 9 Q You recall nothing whatsoever about the 10 two or three times that you've been deposed as an 11 individual? 12 A I really don't remember now. 13 Q You were previously -- well, strike that. 14 After law school, can you walk us through 15 your employment history, briefly? 16 A Yes. Would you like me to do so? 17 Q Yes. 18 A Okay. I went to work for a litigation 19 boutique for approximately five years here in 20 Dallas. 21 Q Named? 22 A Hartline, Dacus, Barger, Dryer & Kern. 23 We'll spell it during a break. And then in 24 September 2009, I began working at Highland 25 Capital Management, LP.</p>	<p>16</p> <p>1 A Michael Colvin, Andrei Dorenbaum, Patrick 2 Daugherty, John Honis, Scott Ellington, Brian 3 Collins and I believe Debbie Reynolds as well. 4 Q And what was -- and you were hired by 5 Highland Capital Management, correct? 6 A Yes. 7 Q By the way, just to be clear, I may say 8 Highland Capital Management, I may say HCM, I may 9 say the debtor. You'll understand those are all 10 interchangeable for Highland Capital Management, 11 LP, the entity that you were hired by in 2009? 12 A Okay. 13 Q Thanks. So what was the job you were 14 hired to do for HCM? 15 A I was hired as litigation counsel. 16 Q What did that mean? What were your job 17 duties as litigation counsel? 18 A To work on and manage litigation. 19 Q For whom? 20 A For HCMLP and for its other affiliates. 21 Q And did your role ever change? 22 A Yes. 23 Q When? 24 A February 2011. 25 Q How did your role change in February 2011?</p>

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<p>17</p> <p>1 A I was promoted to assistant general 2 counsel. 3 Q Who promoted you? 4 A The company. 5 Q Was there a person who you understood to 6 have made the decision? 7 A I don't know. 8 Q Who were you reporting to prior to your 9 promotion? 10 A Scott Ellington. 11 Q Did you always report to Scott Ellington 12 throughout your tenure at HCM? 13 A Not that entire period. I believe there 14 was a brief period where I did not report to him. 15 Q When was that? 16 A Subsequent to my promotion but before 17 Mr. Ellington became general counsel. 18 Q And when was that? 19 A I think it would have been most of 2011. 20 Q Okay. So -- and who did you report to 21 during most of 2011? 22 A Michael Colvin. 23 Q And then Mr. Colvin left and Mr. Ellington 24 became general counsel? 25 A Correct.</p>	<p>19</p> <p>1 general counsels to him? 2 A I'm trying to remember the exact time 3 frame. There were other assistant general 4 counsels at various points in time. Those are 5 individuals I recall held that title at one point 6 in time or another. 7 Q Okay. So you got some additional duties 8 that you just described when you became assistant 9 general counsel, but fair to say, you were still 10 focused primarily on litigation? 11 A Yes. 12 Q And did your role ever change after that? 13 A I mean, I took on additional duties and 14 responsibilities as needed. 15 Q Did you -- and what were those? 16 A Depended on which business unit needed 17 support and I would help them out. 18 Q What do you mean? 19 A I assisted the real estate team, I 20 assisted the credit analysis team and I assisted 21 the back office, accounting and operations. 22 Q How did you assist the back office 23 accounting and operations? 24 A I worked on audit-related matters. 25 Q What do you mean?</p>
<p>18</p> <p>1 Q So before that time period and then after 2 that time period, through your entire tenure at 3 HCM, you reported to Scott Ellington, correct? 4 A Correct. 5 Q Did your duties change when you became 6 assistant general counsel? 7 A Yes. 8 Q In what way? 9 A I took on nonlitigation management-related 10 duties. 11 Q Like what? 12 A Corporate work, contract drafting and 13 review, and then supporting some of the business 14 units, a lot of transactional work. 15 Q Were there other assistant general 16 counsels at the time? 17 A I believe the answer is yes. 18 Q Do you know who they were? 19 A Thomas Surgent, Scott Ellington and Andrei 20 Dorenbaum. 21 Q I see. So the four of you were -- when 22 you were first promoted, were all assistant 23 general counsels to Mr. Colvin. And then when 24 Mr. Colvin left, Mr. Ellington became the GC and 25 you were all -- the remaining three were assistant</p>	<p>20</p> <p>1 A The preparation of audits. 2 Q Did you work on asset valuations ever? 3 A No. 4 Q What does the credit analysis team do? 5 A They analyze and track and make 6 recommendations for investments in debt 7 instruments. 8 Q And what was the assistance you provided 9 to that group? 10 A Credit analysis -- credit agreement 11 analysis as requested. 12 Q What does that mean? 13 A Mean if they asked me to look at a credit 14 agreement, I would look at it and I would give 15 them my perspective on it. 16 Q Okay. Did you ever get a promotion after 17 2011? 18 A I had an additional job title added, but I 19 don't think it was really a promotion. 20 Q What was that? 21 A I believe I had a title of managing 22 director of distress added. 23 Q What did that title entail? 24 A I didn't really do any work under that 25 title.</p>

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<p>21</p> <p>1 Q Why did you get that title, as far as you 2 know?</p> <p>3 A It was anticipated that certain members of 4 the legal team, including myself, would be 5 assisting with distressed assets and private 6 equity.</p> <p>7 Q Starting when?</p> <p>8 A Maybe 2018.</p> <p>9 Q Who anticipated that?</p> <p>10 A Mr. Ellington informed us that we were 11 going to be asked to help out with that role.</p> <p>12 Q And -- but you never did help out with any 13 distressed assets after you got that job title?</p> <p>14 A Not really, no.</p> <p>15 Q Were you ever given the title director of 16 private equity?</p> <p>17 A Oh, that's what the title was. Yeah.</p> <p>18 Q Okay. Did you ever perform any functions 19 related to that title?</p> <p>20 A No, not really.</p> <p>21 Q So your job really didn't change beyond 22 what you've described, from 2011 until you left 23 HCM, correct?</p> <p>24 A We had -- depending on the needs of the 25 company, things would -- things would change and</p>	<p>23</p> <p>1 Q Did you physically work near him?</p> <p>2 A We were in the same office facility, if 3 that's the question.</p> <p>4 Q Were you on the same floor?</p> <p>5 A The entire firm was on the same floor, so 6 yes.</p> <p>7 Q Okay. So I take it you'd see him at least 8 on a relatively frequent basis around the office?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A Not necessarily, no, actually.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Did you have your own office?</p> <p>13 A No.</p> <p>14 Q Did you sit out on a pod situation or what 15 was your physical layout for your workspace?</p> <p>16 A We had an open floor plan and I was 17 sitting in the open floor plan.</p> <p>18 Q Who sat near you?</p> <p>19 A When?</p> <p>20 Q In the 2017 through 2019 time frame.</p> <p>21 A I believe Jason Goldsmith sat near me.</p> <p>22 Q Anyone else?</p> <p>23 A Eric Girard.</p> <p>24 Q Anyone else?</p> <p>25 A I don't remember anyone else sitting near</p>
<p>22</p> <p>1 you'd have different tasks, but the basic nature 2 of my role didn't change.</p> <p>3 Q How often did you communicate with 4 Mr. Dondero during the course of your employment 5 at HCM?</p> <p>6 A It really depended on when during that 7 employment. I was there for 11 years.</p> <p>8 Q How about in the last two years prior to 9 HCM going into bankruptcy, in the -- put yourself 10 back to the two years prior to the bankruptcy, 11 roughly how often were you directly communicating 12 with Mr. Dondero?</p> <p>13 A So you're talking approximately 2017 14 through 2019?</p> <p>15 Q Yes.</p> <p>16 A I don't know. Maybe once a month.</p> <p>17 Q And would that communication be in person 18 or be by e-mail?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A It would depend on the communication.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q How often did you speak with Mr. Dondero 23 on average in 2017 through 2019?</p> <p>24 A I really don't recall. I would have to 25 speculate.</p>	<p>24</p> <p>1 me at that point in time, no.</p> <p>2 Q How about Scott Ellington?</p> <p>3 A He did not sit near me.</p> <p>4 Q Where did he sit?</p> <p>5 A He had an office.</p> <p>6 Q How often did you speak with Scott 7 Ellington on average during that time period?</p> <p>8 A 2017 to '19? I don't think I can give a 9 fair average estimate. It really would depend on 10 the ebb and flow of work.</p> <p>11 Q Well, would it be on a -- can you say 12 whether it would be roughly on a daily, weekly, 13 monthly basis?</p> <p>14 A There were times when we'd speak multiple 15 times a day and there were times when I wouldn't 16 talk to him for two or three weeks.</p> <p>17 Q Who did Scott Ellington report to during 18 the time period you worked -- were -- strike that.</p> <p>19 After Scott Ellington became general 20 counsel, who did he report to?</p> <p>21 A Mr. Dondero.</p> <p>22 Q Did you supervise anyone in the legal 23 department after you got your promotion to 24 assistant general counsel?</p> <p>25 A I had younger associate attorneys that</p>

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<p>25</p> <p>1 could be staffed on to matters of mine, but they</p> <p>2 did not technically report to me.</p> <p>3 Q Okay. But you would direct their work in</p> <p>4 some -- depending on the needs?</p> <p>5 A Depending on the tasks, yes.</p> <p>6 Q Who were they?</p> <p>7 A Stephanie Vitiello.</p> <p>8 Q Anyone else?</p> <p>9 A Lauren Thedford.</p> <p>10 Q Anybody else?</p> <p>11 A No.</p> <p>12 Q So Stephanie -- how did you pronounce --</p> <p>13 how do you spell that last name?</p> <p>14 A V-i-t-i-e-l-l-o.</p> <p>15 Q She was an attorney there?</p> <p>16 A Yes.</p> <p>17 Q Does she still work at HCM?</p> <p>18 A No.</p> <p>19 Q When did she leave HCM?</p> <p>20 A I don't know exactly.</p> <p>21 Q Was she there until you left?</p> <p>22 A Yes.</p> <p>23 Q So she was still there until this year,</p> <p>24 2021?</p> <p>25 A Yes.</p>	<p>27</p> <p>1 amount of deferred compensation.</p> <p>2 Q And then did your compensation change</p> <p>3 after the bankruptcy?</p> <p>4 A No. Well, depends on your interpretation</p> <p>5 of whether it changed or not.</p> <p>6 Q Okay. In terms of dollar amounts, did</p> <p>7 it --</p> <p>8 A In terms of the dollar amounts I actually</p> <p>9 received, yes, it changed.</p> <p>10 Q In what -- roughly the magnitude, did you</p> <p>11 get half as much, two-thirds as much, twice as</p> <p>12 much?</p> <p>13 A The UCC objected to the payment of my</p> <p>14 bonuses. So in the amounts that the UCC objected.</p> <p>15 Q I see. And so what was your comp last</p> <p>16 year? I guess 2020 would have been the full year</p> <p>17 that you were under the bankruptcy rules. What</p> <p>18 was your rough total comp?</p> <p>19 A I'm not exactly sure. It would have been</p> <p>20 my salary, plus not receiving the bonuses.</p> <p>21 Q And what is your compensation at your new</p> <p>22 job?</p> <p>23 A Roughly flat, as compared to what I had</p> <p>24 been promised at Highland.</p> <p>25 Q Meaning what? Roughly 400,000 is what you</p>
<p>26</p> <p>1 Q Where is she now in terms of employment?</p> <p>2 A She works at Skyview.</p> <p>3 Q How about Lauren? Does she work at</p> <p>4 Skyview as well?</p> <p>5 A No.</p> <p>6 Q Where is she now in terms of employment,</p> <p>7 if you know?</p> <p>8 A I don't.</p> <p>9 Q Did you -- during the time you were at</p> <p>10 Highland, who paid your salary?</p> <p>11 A Highland Capital Management, LP.</p> <p>12 Q In the last year before the bankruptcy,</p> <p>13 what was your total comp, roughly, from HCM?</p> <p>14 A I would have to go back and look. It was</p> <p>15 maybe 3- or \$400,000.</p> <p>16 Q And was that partially salary and</p> <p>17 partially bonus?</p> <p>18 A Yes.</p> <p>19 Q What was the rough split there?</p> <p>20 A Maybe 50/50.</p> <p>21 Q And did you have any other comp, in terms</p> <p>22 of equity or deferred compensation or anything</p> <p>23 else like that, in the final year that you worked</p> <p>24 at Highland before the bankruptcy?</p> <p>25 A I think I might have had a very small</p>	<p>28</p> <p>1 expect to make this year?</p> <p>2 A I don't know the exact number, but it's</p> <p>3 roughly flat, so it's whatever is reflected in the</p> <p>4 accounting records.</p> <p>5 Q What accounting records?</p> <p>6 A The ones at Highland.</p> <p>7 Q So whatever is reflected in terms of what</p> <p>8 you were slated to receive prebankruptcy is the</p> <p>9 amount -- is the amount you're expecting to get</p> <p>10 paid at your new job?</p> <p>11 A Correct.</p> <p>12 Q Did you have any other sources of income</p> <p>13 other than HCM during your time there?</p> <p>14 A Yes.</p> <p>15 Q What was that?</p> <p>16 A I received a payment from NexPoint.</p> <p>17 Q Okay. What's NexPoint?</p> <p>18 A NexPoint Advisors, LP.</p> <p>19 Q And when did you receive a payment from</p> <p>20 NexPoint?</p> <p>21 A May of 2020.</p> <p>22 Q For -- what was the amount of that?</p> <p>23 A It was approximately 300,000 something.</p> <p>24 Q And what was that for?</p> <p>25 A It was the deferred compensation that I</p>

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<p style="text-align: right;">29</p> <p>1 had been waiting for for three years, that the UCC 2 chose not to pay me that had vested and earned. 3 Q I see. So NexPoint paid deferred 4 compensation that you had been expecting to get 5 paid from HCM prior to the bankruptcy? 6 A Correct. 7 Q And did -- is that 300,000, did that 8 account for the total of deferred comp that you 9 believed you were due at that time? 10 MS. SMITH: Objection, form. 11 MR. CLUBOK: Sorry, what's the form 12 objection? 13 MS. SMITH: I think that's vague. He was 14 supposed to get deferred comp over multiple years. 15 MR. CLUBOK: Fair enough. Let me try -- 16 thanks. Let me try to make it clearer. 17 BY MR. CLUBOK: 18 Q When you got that -- it was a lump-sum 19 payment that you got in May of 2020? 20 A Yes. 21 Q Was that amount supposed to be a total of 22 all of the deferred comp that you believed you 23 were owed at that point? 24 A I'm struggling with your question. It was 25 the amount of the deferred compensation that</p>	<p style="text-align: right;">31</p> <p>1 Q But not from the debtor, instead from 2 NexPoint? 3 A I don't believe we discussed where it was 4 going to come from. 5 Q So Mr. Collins just came to you one day 6 and said you're going to be getting this money? 7 A Yes. 8 Q And then it showed up and it was from 9 NexPoint? 10 A It showed up and honestly I didn't even 11 check where it came from until much later. 12 Q When did you check? 13 A There was a deposition earlier and -- I 14 apologize. I'm trying to remember. It had -- it 15 had something -- no, there was a deposition 16 earlier I think this year and I wasn't -- I didn't 17 know the answer and so I went back and looked. 18 Q I see. Did you look before the deposition 19 or after? 20 A After. 21 Q Did you -- did you ever discuss receiving 22 that comp with anyone other than Mr. Collins? 23 A I don't believe so, no. 24 Q I'm setting aside your spouse if you have 25 one or significant other if you have one. But</p>
<p style="text-align: right;">30</p> <p>1 was -- that I had earned and was due and payable 2 to me in May of 2020. 3 Q Right. And without getting to whether 4 that's accurate, you believed that there was a 5 total amount of deferred comp that was due to you 6 from Highland Capital Management as of May 2020, 7 correct? 8 A Yes. 9 Q And the amount that NexPoint paid you 10 equalled the amount that you believed was due to 11 you from Highland Capital Management through that 12 point? 13 A Yes. 14 Q Okay. And did you disclose that 15 compensation to the debtor? 16 A To the company generally? I mean, it came 17 from the HR department of the debtor. So the 18 debtor was aware of it. 19 Q Sorry. It came from the HR department of 20 the debtor? 21 A Yes. 22 Q What do you mean? 23 A Mr. Brian Collins, who was a debtor 24 employee, told me to -- that I would be receiving 25 the payment.</p>	<p style="text-align: right;">32</p> <p>1 other than that, or your lawyers? 2 A Actually, I was about to say. The answer 3 is, yes, I did discuss it with other people and 4 that would be the attorneys sitting to the right 5 of me. 6 Q Right. So I'm going to exclude the 7 attorneys representing you from this question or 8 if you have a spouse or even a significant other. 9 A I have a spouse. 10 Q That's fine. So exclude that person. 11 Other than those people, did you ever discuss 12 receiving that comp with anyone until the 13 deposition? 14 A No. 15 Q Not Mr. Ellington? 16 A No. 17 Q Not anybody else at the debtor other than 18 Mr. Collins? 19 A No. 20 Q Where are you currently employed? 21 A I'm currently employed by Skyview Group. 22 Q When did you leave HCM? 23 A On or about January 5th, 2021. 24 Q Why did you leave HCM? 25 A My employment was terminated.</p>

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<p>33</p> <p>1 Q By whom?</p> <p>2 A Mr. Seery.</p> <p>3 Q Did he or anybody tell you why?</p> <p>4 A Yes.</p> <p>5 Q What did they tell you? Well, first of</p> <p>6 all, who told you?</p> <p>7 A Mr. Seery.</p> <p>8 Q Okay. What did he say?</p> <p>9 A He said I was being terminated for breach</p> <p>10 of fiduciary duty, for disclosing confidential</p> <p>11 information and for working against the best</p> <p>12 interest of the debtor.</p> <p>13 Q Did he give you any more details?</p> <p>14 A I asked him for details and he refused to</p> <p>15 provide them.</p> <p>16 Q When you were at Highland Capital</p> <p>17 Management, you had an e-mail that used the</p> <p>18 hcmpl.com and HighlandCapital.com domains at</p> <p>19 various points during your tenure there?</p> <p>20 A Yes.</p> <p>21 Q Did you have any other e-mails that you</p> <p>22 used to conduct any business related to Highland</p> <p>23 prior to being terminated?</p> <p>24 A No.</p> <p>25 Q You never got e-mail at any other address</p>	<p>35</p> <p>1 general counsel at HCM?</p> <p>2 A I did due diligence and evaluated</p> <p>3 litigation that SAS was considering investing in</p> <p>4 as a litigation funder.</p> <p>5 Q Anything else for SAS Management?</p> <p>6 A That was really it.</p> <p>7 Q And so did you understand that work for</p> <p>8 SAS Management to be part of your job duties?</p> <p>9 A It was something I was instructed to do</p> <p>10 from my seat at Highland. It was a service I was</p> <p>11 instructed to provide from my seat at Highland.</p> <p>12 Q And you had absolutely no idea what, if</p> <p>13 any, connection SAS Management had to Highland</p> <p>14 when you were given these instructions?</p> <p>15 A That's not my testimony.</p> <p>16 Q Did you have any idea -- strike that.</p> <p>17 Did you have any idea about what, if any,</p> <p>18 connection SAS Management had to Highland when you</p> <p>19 were given the instructions to provide services</p> <p>20 for it?</p> <p>21 A I knew it had some connection to</p> <p>22 Mr. Ellington, but other than that, I really</p> <p>23 didn't know.</p> <p>24 Q What do you mean some connection to</p> <p>25 Mr. Ellington?</p>
<p>34</p> <p>1 other than ones that were hcmpl.com or</p> <p>2 HighlandCapital.com that related in any way to the</p> <p>3 work you did for Highland?</p> <p>4 A I don't want to say it related to the work</p> <p>5 I did at Highland, but I had another e-mail</p> <p>6 address.</p> <p>7 Q What was that?</p> <p>8 A I had an e-mail address at sasmgt.com.</p> <p>9 Q What's SAS MGT?</p> <p>10 A SAS Management.</p> <p>11 Q What is that?</p> <p>12 A It was a litigation funding company.</p> <p>13 Q Why did you have an e-mail address with</p> <p>14 the litigation funding company called SAS?</p> <p>15 A From my role at Highland, I was instructed</p> <p>16 to provide services to SAS Management and I did</p> <p>17 so.</p> <p>18 Q Who instructed you to do that?</p> <p>19 A Mr. Ellington.</p> <p>20 Q And was SAS owned by Highland?</p> <p>21 A Actually, I don't know who owns SAS.</p> <p>22 Q Is SAS affiliated with Highland?</p> <p>23 A I don't know the answer to that question.</p> <p>24 Q And what services were you instructed to</p> <p>25 provide to SAS Management while you were assistant</p>	<p>36</p> <p>1 A He had some level of authority with the</p> <p>2 organization.</p> <p>3 Q And you knew nothing more specific than</p> <p>4 that?</p> <p>5 A Not really, no.</p> <p>6 Q Well, when you say not really, do you mean</p> <p>7 literally you knew nothing else when you were</p> <p>8 instructed to do work for SAS other than</p> <p>9 Mr. Ellington had some connection to SAS and that</p> <p>10 was all you knew about SAS?</p> <p>11 A I mean, sitting here today, I really don't</p> <p>12 recall anything else.</p> <p>13 Q Do you today know anything more about</p> <p>14 SAS's connection, if any, to Highland?</p> <p>15 A No, I don't.</p> <p>16 Q As a lawyer working for Highland, were you</p> <p>17 ever asked to consider whether or not entities</p> <p>18 were affiliated entities during the course of your</p> <p>19 work?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 A That was outside of the scope of my job</p> <p>22 duties. That was solely the purview of</p> <p>23 Mr. Sargent in the compliance department.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q You said earlier that part of the work you</p>

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<p>37</p> <p>1 had to do at Highland was to do work both for 2 Highland and for Highland affiliates, right? 3 A Correct. 4 Q Did you understand SAS to be a Highland 5 affiliate when you were asked to do work for it? 6 A I don't remember how the compliance 7 department classified SAS. I believe they 8 classified them as not an affiliate. 9 Q But my question is did you understand 10 Highland to be an affiliate when you were asked to 11 do work for SAS? 12 A I understood that whatever the compliance 13 department and Mr. Surgent's determination of what 14 was or wasn't an affiliate was the final 15 determination, and his determination, I believe, 16 is that it wasn't. 17 Q Why do you believe that? 18 A Because that's my recollection is that was 19 his determination. 20 Q Did he tell you that? 21 A I'm trying to remember if he told me that 22 or if his determination was told to me by somebody 23 else. 24 Q Did you specifically seek out that 25 information as to whether SAS was an affiliate of</p>	<p>39</p> <p>1 Q And they all assisted you in due diligence 2 work done on behalf of SAS while you were all 3 employed at Highland? 4 A Not necessarily, no. 5 Q Well, Katie Irving did, correct? 6 A Assisted me? No. 7 Q Did Katie Irving perform work for SAS 8 while she was employed at HCM, as far as you know? 9 A I have a general understanding that she 10 did, but I don't really know what she did for that 11 entity or those entities. 12 Q Did you ever -- when was the last time you 13 performed work for SAS? 14 A It's been a long time. Probably prior to 15 the bankruptcy sometime. 16 Q Did you ever disclose the existence of SAS 17 to the independent directors? 18 MR. FEINSTEIN: Excuse me. Andy, if I 19 could interrupt at this point. For the record, 20 Rob Feinstein of Pachulski representing Highland 21 Capital Management. So this seem like as good a 22 time as any to put two statements on the record on 23 behalf of the debtor that I think will help make 24 the deposition go more smoothly. 25 First, obviously, Mr. Leventon was an</p>
<p>38</p> <p>1 Highland? 2 A I don't believe I did, no. 3 Q Do you have any idea, as you sit here 4 today, who owns SAS? 5 A I don't. 6 Q Do you have any idea, as you sit here 7 today, whether or not Mr. Ellington has any 8 ownership interest in SAS? 9 A I actually don't know. 10 Q Did you talk to anybody else about work 11 you were doing for SAS other than Mr. Ellington? 12 A Yes. 13 Q Who? 14 A Other individuals. I guess Mr. Sevilla. 15 Q Who else? 16 A Ms. Thedford. 17 Q Who? 18 A Thedford. 19 Q Is that Lauren? 20 A Yes. 21 Q Okay. Who else? 22 A Ms. Katie Irving. 23 Q Who else? 24 A That's who I can think of sitting here 25 today.</p>	<p>40</p> <p>1 in-house counsel at our client until he was 2 terminated earlier this year and that raises the 3 question which has been the subject of some 4 colloquy in prior depositions, about whether the 5 extent to which the debtor is going to invoke the 6 attorney-client privilege. 7 As we advised counsel to the witness and 8 UBS beforehand, I'll just restate on the record, 9 if we have a problem with a question, if we think 10 that we want to invoke the privilege, you'll hear 11 from us. Otherwise, it's not our intention to 12 answer questions, as we were asked yesterday about 13 whether we're waiving the privilege or not, 14 invoking the privilege. As I indicated yesterday, 15 there are a number of bases under which the 16 privilege may not apply to certain discussions 17 between in-house counsel and others at the 18 company. But again, if you hear from us, you'll 19 know that we object; if you don't hear from us, 20 then you should assume that we're not objecting. 21 The other thing I'd like to address is 22 because of Mr. Leventon's role as in-house 23 counsel, the debtor as defendant in the action 24 does have quite a number of questions it would 25 like to ask, but just take -- going back to our</p>

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<p style="text-align: right;">41</p> <p>1 colloquy yesterday with Frances, as she noted, 2 this is a court-ordered deposition that was 3 noticed by UBS. So our intention today is not to 4 question the witness, to fully reserve our right 5 to seek his deposition at a later date in this 6 action, which we may or may not do, depending upon 7 the testimony that he gives today. But we do want 8 to give UBS their full day of deposition as the 9 Court ordered. 10 MR. CLUBOK: Okay. 11 MR. FEINSTEIN: Thank you. 12 MR. CLUBOK: Thank you. 13 BY MR. CLUBOK: 14 Q Mr. Leventon, do you need me to repeat the 15 question? 16 A I actually don't remember what the 17 question was at this point. 18 Q I kind of don't either, so give me one 19 second here. Let's see if I can find it. Okay. 20 Ready to go. 21 Sir, did you ever disclose the existence 22 of SAS to the independent directors? 23 A I don't ever remember discussing that 24 entity with them one way or another. 25 Q Did you disclose the existence of SAS to</p>	<p style="text-align: right;">43</p> <p>1 A Mr. Ellington. 2 Q The sole owner? 3 A I don't know actually. I know he's one of 4 the owners. 5 Q Do you know any other owners of Skyview? 6 A Sitting here today, I do not. 7 Q I take it you have no equity in Skyview 8 Group? 9 A No. 10 Q Do you expect to get any equity? 11 A I don't know if I will or not. 12 Q Has that been discussed at all? 13 A There have been discussions but nothing 14 really determinative. 15 Q Okay. So there's been discussions where 16 it's been held out to you that it's a possibility 17 that you may one day get equity in Skyview Group, 18 correct? 19 A Correct. 20 Q And those discussions were with 21 Mr. Ellington, right? 22 A I don't believe they were, actually. 23 Q Who were they with? 24 A Mr. Collins. 25 Q And you understood Mr. Collins to be</p>
<p style="text-align: right;">42</p> <p>1 counsel for the independent directors? 2 A I don't recall discussing that entity with 3 them at any point in time, no. 4 Q Let's go back to your current employment. 5 You said you work for the Skyview Group? 6 A Yes. 7 Q Is that the only entity you work for 8 currently? 9 A No. 10 Q Okay. Who else do you work for besides 11 the Skyview Group? 12 A Skyview Legal PC. 13 Q What's that? 14 A It is a dedicated law firm that provides 15 services -- legal services to Skyview Group's 16 clients. 17 Q Do you work for any other entities? 18 A No. 19 Q Who pays your compensation? 20 A Today it's Skyview Group, but I think it's 21 switching over to Skyview Legal PC. 22 Q And do you expect that to affect your 23 total compensation? 24 A No. 25 Q Who owns Skyview Group?</p>	<p style="text-align: right;">44</p> <p>1 speaking on behalf of Mr. Ellington when he had 2 these discussions, or with his authority? 3 A I understood him to be speaking on behalf 4 of the company. 5 Q Okay. On behalf of Skyview Group? 6 A Correct. 7 Q That's the same Mr. Collins that you said 8 is the only person you ever spoke to about getting 9 the roughly \$300,000 in May of 2020 from NexPoint, 10 correct? 11 A Correct. 12 Q Was Mr. Collins working for NexPoint at 13 the time? 14 MS. SMITH: Objection, form. 15 A Could you clarify your question, please? 16 BY MR. CLUBOK: 17 Q Was Mr. Collins working for NexPoint in 18 May of 2020 when you had this discussion with him? 19 MS. SMITH: Objection, form. 20 A I don't know that I can answer the 21 question as asked. Could you rephrase it, please? 22 BY MR. CLUBOK: 23 Q Did you know -- well, was Mr. Collins 24 working for HCM in May of 2020, as far as you 25 know?</p>

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<p>45</p> <p>1 A Yes.</p> <p>2 Q Was Mr. Collins working for NexPoint in</p> <p>3 May of 2020, as far as you know?</p> <p>4 A Can you define working? Because given the</p> <p>5 situation, it has some complexities to it. Are</p> <p>6 you asking if he was employed by NexPoint?</p> <p>7 Q Yes, was he employed by NexPoint?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q But he was acting on NexPoint's behalf, as</p> <p>10 far as you know, in May of 2020?</p> <p>11 A Under shared services agreements, yes.</p> <p>12 Q So when he arranged for you to get paid</p> <p>13 \$300,000 in May of 2020, you understood him to be</p> <p>14 doing that on behalf of NexPoint pursuant to the</p> <p>15 shared services agreement NexPoint had with HCM at</p> <p>16 the time, correct?</p> <p>17 A No.</p> <p>18 Q Okay. But shared services agreement at</p> <p>19 the time authorized Mr. Collins to act on behalf</p> <p>20 of NexPoint, as far as you know?</p> <p>21 A Sorry, let me rephrase. I disagree with</p> <p>22 the premise of your prior question. I shouldn't</p> <p>23 have answered no. I simply disagree with the</p> <p>24 underlying premise.</p> <p>25 Q In what way?</p>	<p>47</p> <p>1 statement detail.</p> <p>2 Q Did you believe it was coming from HCM at</p> <p>3 that time?</p> <p>4 A No.</p> <p>5 Q And so you knew it -- you didn't think it</p> <p>6 was coming from HCM and you had no idea where it</p> <p>7 was coming from until you checked after the</p> <p>8 deposition you had earlier this year, correct?</p> <p>9 A I'm not saying I had no idea. I'm saying</p> <p>10 I simply didn't check or look into it at all.</p> <p>11 Q What was the idea you had about the source</p> <p>12 of the funds?</p> <p>13 A I didn't have an idea. I didn't check or</p> <p>14 look, Mr. Clubok.</p> <p>15 Q Okay. So you had no idea about the source</p> <p>16 of the funds other than it was not coming from</p> <p>17 HCM, when you were told you were going to get</p> <p>18 roughly 300,000 in May of 2020 by Mr. Collins,</p> <p>19 correct?</p> <p>20 A I didn't look one way or another.</p> <p>21 Q I didn't ask you that. I said you had no</p> <p>22 idea -- your testimony here today is you had no</p> <p>23 idea about the source of the funds other than you</p> <p>24 knew it was not coming from HCM, when you were</p> <p>25 told you were going to get roughly \$300,000 in May</p>
<p>46</p> <p>1 A At the time I received that payment, I</p> <p>2 didn't know that it had come from NexPoint.</p> <p>3 Q Where did you believe it had come from at</p> <p>4 the time?</p> <p>5 MS. SMITH: Andy, I'm going to object to</p> <p>6 this line of questioning. I refrained to see how</p> <p>7 far you were going, but this is not within the</p> <p>8 scope of the deposition. This is supposed to be</p> <p>9 about the temporary restraining order and the</p> <p>10 preliminary injunction and the relationship to</p> <p>11 Sentinel. And this -- I mean, I allowed several</p> <p>12 minutes of questions on this, but this doesn't</p> <p>13 seem at all related and now it's also repetitive.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q In May of 2020, where did you believe the</p> <p>16 \$300,000 was coming from?</p> <p>17 A I didn't have a belief one way or another.</p> <p>18 Q Mr. Collins just said you were going to</p> <p>19 get 300,000 and you had no belief at all the</p> <p>20 source of those funds?</p> <p>21 A He said you're going to get the deferred</p> <p>22 compensation that your -- that you earned and that</p> <p>23 you're owed and that you've been waiting for for</p> <p>24 three years, but he didn't mention where it was</p> <p>25 coming from and I didn't check the bank account</p>	<p>48</p> <p>1 of 2020 by Mr. Collins, correct?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I didn't look one way or another.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q I'm not asking whether you looked. My</p> <p>6 question is -- and I'll ask it one more time.</p> <p>7 When you received -- is it true -- strike that.</p> <p>8 Is it true that you had no idea about the</p> <p>9 source of the funds other than you knew it was not</p> <p>10 coming from Highland Capital Management, when you</p> <p>11 were told you were going to get roughly \$300,000</p> <p>12 in May of 2020 by Mr. Collins?</p> <p>13 A I didn't look one way or another.</p> <p>14 Q I'm not asking you whether you looked.</p> <p>15 I'm asking you whether you had an idea. You've</p> <p>16 worked at Highland for a long time, you have</p> <p>17 beliefs and ideas about how things operate. My</p> <p>18 question is, did you have an idea in your head, a</p> <p>19 belief or an idea or a thought about the source of</p> <p>20 the funds other than knowing they did not come</p> <p>21 directly from HCM?</p> <p>22 A I don't recall having any -- having any</p> <p>23 thought process at the time because I simply</p> <p>24 didn't look into it.</p> <p>25 Q What are your job -- what's your job title</p>

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<p>1 at Skyview?</p> <p>2 A I think it's counsel.</p> <p>3 Q Who do you report to at Skyview Group?</p> <p>4 A It's not really clear, actually. We're</p> <p>5 still kind of figuring things out.</p> <p>6 Q Who gives you directions on what to do?</p> <p>7 A Really nobody.</p> <p>8 Q You just have a sense of what to do</p> <p>9 without anyone telling you?</p> <p>10 A I mean, we talk internally about tasks and</p> <p>11 we divide them up and I take the ones that I need</p> <p>12 to do and take care of and I take care of them.</p> <p>13 Q Is there anyone you consider to be in any</p> <p>14 sort of management position above you other than</p> <p>15 Mr. Ellington?</p> <p>16 A Maybe Mr. Sevilla, but that's not really</p> <p>17 clear.</p> <p>18 Q What about Skyview Legal PC? Do you have</p> <p>19 a job title there?</p> <p>20 A Yes.</p> <p>21 Q What's that?</p> <p>22 A Shareholder.</p> <p>23 Q How many shareholders are there at Skyview</p> <p>24 Legal PC?</p> <p>25 A We're just forming the entity, so we</p>	<p>51</p> <p>1 A I'm not really sure.</p> <p>2 Q I didn't ask if you were sure. Do you</p> <p>3 anticipate anyone else being a shareholder, as you</p> <p>4 sit here today?</p> <p>5 MS. SMITH: Isaac -- excuse me.</p> <p>6 Mr. Leventon, before you answer, make sure that</p> <p>7 you do not divulge any attorney-client privileged</p> <p>8 information with either Skyview Legal PC or in</p> <p>9 your role as counsel to Skyview Group.</p> <p>10 A There's been no determination. I don't</p> <p>11 have an anticipation one way or another.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Do you have an anticipation of what level</p> <p>14 of -- I assume as a shareholder you have some</p> <p>15 equity interest?</p> <p>16 A Correct.</p> <p>17 Q Do you have any anticipation of roughly</p> <p>18 what equity interest you will have in Skyview</p> <p>19 Legal PC?</p> <p>20 A No.</p> <p>21 Q You don't know if it's 1 percent or</p> <p>22 50 percent?</p> <p>23 A Correct.</p> <p>24 Q And has there been any discussion to that</p> <p>25 effect?</p>
<p>50</p> <p>1 actually haven't determined that yet.</p> <p>2 Q Has it been established already?</p> <p>3 A It's been formed, but we haven't executed</p> <p>4 the bylaws yet.</p> <p>5 Q Who are the shareholders that you</p> <p>6 anticipate?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A We really haven't figured that out yet.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Well, you said that you anticipate being a</p> <p>11 shareholder, right?</p> <p>12 A Yes.</p> <p>13 Q Has there already been anything signed to</p> <p>14 make that happen or is that just something you</p> <p>15 believe will happen?</p> <p>16 A The latter. I don't think we have</p> <p>17 anything executed yet.</p> <p>18 Q Other than yourself, who else do you</p> <p>19 anticipate being a shareholder of Skyview</p> <p>20 Legal PC, as you sit here today?</p> <p>21 A Mr. Sevilla.</p> <p>22 Q Who else?</p> <p>23 A I don't know.</p> <p>24 Q Just you and Sevilla and no one else, as</p> <p>25 you sit here today?</p>	<p>52</p> <p>1 A No.</p> <p>2 Q So the amount of equity ownership in</p> <p>3 Skyview is still to be determined, Skyview</p> <p>4 Legal PC?</p> <p>5 A Correct.</p> <p>6 Q And you anticipate the ultimate</p> <p>7 decision-maker for that will be Scott Ellington,</p> <p>8 correct?</p> <p>9 A No.</p> <p>10 Q Who will be the ultimate decision-maker</p> <p>11 for that?</p> <p>12 A Collectively, the attorneys that will be</p> <p>13 employed by Skyview Legal PC.</p> <p>14 Q Whose idea was it to create Skyview</p> <p>15 Legal PC?</p> <p>16 MS. SMITH: I'm going to interrupt and</p> <p>17 again object. I feel like I'm giving you a lot of</p> <p>18 latitude, but this is well beyond the scope of</p> <p>19 what Judge Jernigan ruled would be the scope of</p> <p>20 the deposition and the topics.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Whose idea was it to create Skyview</p> <p>23 Legal PC?</p> <p>24 A I need to confer with my counsel for a</p> <p>25 moment as to attorney-client privilege.</p>

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<p>53</p> <p>1 Q Okay. We'll come back to that, then.</p> <p>2 When did you start working at Skyview</p> <p>3 Group?</p> <p>4 A March 1st, 2021.</p> <p>5 Q Unless I say otherwise, let's assume when</p> <p>6 I say Skyview, we're talking about Group, the</p> <p>7 entity that already exists, as opposed to the one</p> <p>8 you're talking about forming that also has Skyview</p> <p>9 in the name; is that okay?</p> <p>10 A I disagree with one premise of what you</p> <p>11 just stated.</p> <p>12 Q What's that?</p> <p>13 A Skyview Legal PC is a created and existing</p> <p>14 entity.</p> <p>15 Q So who are the current shareholders of</p> <p>16 Skyview Legal PC?</p> <p>17 A We don't have a shareholders agreement</p> <p>18 yet. We just have a filing with the State of</p> <p>19 Texas that forms the entity.</p> <p>20 Q And you didn't have to identify the owners</p> <p>21 in that filing?</p> <p>22 A I believe I'm the individual who's the</p> <p>23 contact person with the State for that entity.</p> <p>24 Q Okay. Well, I'll try to say Skyview</p> <p>25 Group, then, to the best of my ability.</p>	<p>55</p> <p>1 A No. Well, I don't think I did, no.</p> <p>2 Q And I apologize if I asked you this, but</p> <p>3 do you know who -- sorry. You said Mr. Ellington</p> <p>4 is the 100 percent owner of Skyview Group, as far</p> <p>5 as you know?</p> <p>6 A That was not my testimony.</p> <p>7 Q Mr. Ellington is the only owner of Skyview</p> <p>8 Group that you're aware of, correct?</p> <p>9 A He's the only one I can think of, yes.</p> <p>10 He's the only person I can think of, yes.</p> <p>11 Q Are you aware of any others?</p> <p>12 A No.</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Does that entity go by any other</p> <p>16 name?</p> <p>17 A It used to be called Highgate.</p> <p>18 Q Why the switch? Do you know?</p> <p>19 A Marketing or branding decided to change</p> <p>20 the name.</p> <p>21 Q Okay. Any other names?</p> <p>22 A No.</p> <p>23 Q The work address you previously provided,</p> <p>24 is that the principal place of business for</p> <p>25 Skyview Group?</p>
<p>54</p> <p>1 What is your -- I take it you don't have</p> <p>2 any current job duties with respect to Skyview</p> <p>3 Legal PC yet?</p> <p>4 A I do.</p> <p>5 Q What are they?</p> <p>6 A Providing service to -- legal service to</p> <p>7 clients.</p> <p>8 Q So you've already started doing that?</p> <p>9 A Yes.</p> <p>10 Q Who are your clients?</p> <p>11 A I have a nondisclosure agreement with</p> <p>12 clients that are not affiliated with Mr. Dondero</p> <p>13 and so I am not at liberty to go into that</p> <p>14 information at this time.</p> <p>15 Q Okay. Aside from clients who are not</p> <p>16 affiliated in any way with Mr. Dondero or</p> <p>17 Mr. Ellington, who are your clients?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A I would really have to think about it.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Can you identify any clients who aren't</p> <p>22 affiliated with Mr. Dondero or Mr. Ellington?</p> <p>23 A Sitting here today, no.</p> <p>24 Q Okay. What -- did you have any role in</p> <p>25 the formation of Skyview Group?</p>	<p>56</p> <p>1 A Yes.</p> <p>2 Q How many employees does it have, roughly?</p> <p>3 A Thirty to 40.</p> <p>4 Q Are they almost all ex-Highland Capital</p> <p>5 Management employees?</p> <p>6 A Yes.</p> <p>7 Q Are they all ex-HCM employees?</p> <p>8 A No.</p> <p>9 Q Are there any other entities that operate</p> <p>10 from the same address other than Skyview Group and</p> <p>11 Skyview Legal PC?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 A Yes.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q What are they?</p> <p>16 A NexBank.</p> <p>17 Q Okay. What else?</p> <p>18 A NexPoint, I believe.</p> <p>19 Q What else?</p> <p>20 A I think that's it.</p> <p>21 Q And do you current --</p> <p>22 A Although there are other tenants in the</p> <p>23 building. I just don't know who they are.</p> <p>24 Q What about CPCM?</p> <p>25 MS. SMITH: Objection, form.</p>

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<p>57</p> <p>1 A CPCM is a wholly owned subsidiary of 2 Skyview Group. 3 BY MR. CLUBOK: 4 Q Are there other wholly owned subsidiaries 5 of Skyview Group? 6 A I don't know. 7 Q That's the only one you know of, CPCM? 8 A Correct. 9 Q What is CPCM? 10 A It is a claims holding company. 11 Q For what kind of claims? 12 A Claims in the debtor's bankruptcy. 13 Q For what? 14 A I believe mostly for employee compensation 15 that was due and payable but not paid. 16 Q And that would include your compensation? 17 A Yes. 18 Q And that would be the -- roughly the same 19 amount that you received from NexPoint in May of 20 2020? 21 MS. SMITH: Objection, form. 22 A Not necessarily, no. 23 BY MR. CLUBOK: 24 Q Is it? 25 A No, not necessarily, no.</p>	<p>59</p> <p>1 pay me my unpaid bonus amounts. 2 Q Did you still have unpaid bonus amounts? 3 A Yes. 4 Q Is that amounts from May 2020 through the 5 time of your employment, or something else? 6 A That's one time period, but that's not all 7 of them. 8 Q I thought you said before that in May of 9 2020, you got trued up to the amount that you 10 believed you were owed at that point? 11 A No. 12 Q Roughly how much more did you believe you 13 were owed in unpaid bonuses beyond what you 14 received in May 2020 from NexPoint? 15 MS. SMITH: Objection, form. 16 A So you're using the wrong nomenclature. 17 There's bonuses and then there's deferred 18 compensation. 19 BY MR. CLUBOK: 20 Q Okay. Roughly how much in bonuses do 21 you -- did you believe you were still owed? 22 A As of what date? 23 Q As of the date of your termination with 24 HCM. 25 A I don't recall the exact number. It would</p>
<p>58</p> <p>1 Q What's the amount of that claim with 2 respect to you? 3 A I'd have to look at the -- I don't recall. 4 Q Roughly. Is it -- 5 A It's whatever is in the -- I don't recall, 6 honestly. 7 Q Did you sell your claim to CPCM? 8 MS. SMITH: Objection, form. 9 A I assigned it to CPCM. 10 BY MR. CLUBOK: 11 Q For what consideration? 12 A Employment at Skyview. 13 Q That was a condition of your employment at 14 Skyview? 15 MS. SMITH: Objection, form. 16 A I believe that's right. I don't recall 17 exactly, but I think that's right. Maybe. I take 18 it back actually. I'm going to change my 19 testimony. I don't remember, honestly. It's 20 whatever is reflected in the documents. 21 BY MR. CLUBOK: 22 Q You don't remember what the consideration 23 is for assigning your claim in the bankruptcy case 24 to CPCM? 25 A I believe Skyview indicated that it would</p>	<p>60</p> <p>1 have been several hundred thousand dollars. 2 Q When was the last time you spoke with 3 Scott Ellington? 4 MS. SMITH: Objection, form. 5 A Three weeks ago, maybe a month. 6 BY MR. CLUBOK: 7 Q Before he left for his vacation or since 8 he's left? 9 A Before. 10 Q Have you communicated with him in any way 11 since he started the vacation he's currently on? 12 A Have I communicated with him in any way? 13 I've been -- actually, no, I haven't directly 14 communicated with him at all. 15 Q What were you thinking about there? 16 A I received a forward of an e-mail that he 17 wrote, but that's it. 18 Q An e-mail to whom? 19 A Brigid Brewer. 20 Q And he wrote that while he was on his 21 trip? 22 MS. SMITH: Objection. 23 Make sure that you're not divulging any 24 privileged information. 25</p>

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<p>61</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q I'm not asking for the substance. I'm</p> <p>3 asking for the timing of when you received this</p> <p>4 e-mail. When -- you received this --</p> <p>5 A I didn't receive the e-mail from</p> <p>6 Mr. Ellington.</p> <p>7 Q You received a forward of it?</p> <p>8 A Correct.</p> <p>9 Q From Brigid?</p> <p>10 A Correct.</p> <p>11 Q And that was dated when, roughly?</p> <p>12 A I don't remember. Sometime over the last</p> <p>13 two weeks.</p> <p>14 Q Okay. Other than that, have you in any</p> <p>15 way received any communications from Mr. Ellington</p> <p>16 since he left for Africa?</p> <p>17 A No.</p> <p>18 Q Did you ever get text messages from</p> <p>19 Mr. Ellington?</p> <p>20 A Yes.</p> <p>21 Q Do you have -- by the way, did you search</p> <p>22 for documents in connection with this adversary</p> <p>23 proceeding?</p> <p>24 A Yes.</p> <p>25 Q Where did you search?</p>	<p>63</p> <p>1 A No, actually, I wouldn't. Who knows phone</p> <p>2 numbers these days.</p> <p>3 Q Well, if you looked at your phone, you</p> <p>4 could identify the phone number Mr. Ellington</p> <p>5 texted you from?</p> <p>6 A Probably, yes.</p> <p>7 Q And Mr. Ellington uses different phones,</p> <p>8 correct?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I don't really know what he does.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Well, you've gotten texts from him from</p> <p>13 different phone numbers, correct?</p> <p>14 A I don't know that that's true actually.</p> <p>15 No.</p> <p>16 Q Were there any documents that you</p> <p>17 identified that were responsive to the request but</p> <p>18 that you deemed to be privileged?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A I'm going to defer to my counsel on what</p> <p>21 documents we gathered and how we handled them. If</p> <p>22 there's a privilege issue, I'm sure they can</p> <p>23 address it.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Well, did you -- who made the decision as</p>
<p>62</p> <p>1 A On my phone.</p> <p>2 Q Where else?</p> <p>3 A On my personal e-mail.</p> <p>4 Q What's your personal e-mail address?</p> <p>5 <-- HIGHLY CONFIDENTIAL --></p> <p>6 Q Do you have any other personal e-mail</p> <p>7 addresses?</p> <p>8 A No.</p> <p>9 Q Okay. Where else did you search for</p> <p>10 documents, if anywhere?</p> <p>11 A That's it.</p> <p>12 Q Did you take any physical documents at all</p> <p>13 from HCM when you left or retain any that you had</p> <p>14 when you left?</p> <p>15 A Yes.</p> <p>16 Q What did you retain?</p> <p>17 A My personnel file. So like my pay stubs</p> <p>18 and those sorts of documents.</p> <p>19 Q Anything else besides your personnel file?</p> <p>20 A I'm trying to remember. I think that was</p> <p>21 it. I may have picked up like some CLE materials</p> <p>22 that I hadn't read yet, but I think that was it.</p> <p>23 Q Mr. Ellington, when he -- you would know</p> <p>24 the phone number that Mr. Ellington texts you</p> <p>25 from, presumably, from your phone, right?</p>	<p>64</p> <p>1 to whether or not documents that you reviewed were</p> <p>2 relevant or not, you or --</p> <p>3 A The counsel sitting to my right.</p> <p>4 Q Did you identify documents? I mean, did</p> <p>5 you turn over your phone and have them search your</p> <p>6 phone?</p> <p>7 A No.</p> <p>8 Q Okay. So who did the search of your</p> <p>9 phone?</p> <p>10 A I did the search.</p> <p>11 Q And so did -- you were responsible for</p> <p>12 looking at your phone and seeing if there were</p> <p>13 documents responsive to our request, correct?</p> <p>14 A I was responsible for locating everything</p> <p>15 that could potentially be responsive and turning</p> <p>16 it over to counsel.</p> <p>17 Q I'm going to specifically ask about the</p> <p>18 search of your phone. Did anyone search your</p> <p>19 phone for responsive documents other than you?</p> <p>20 A No.</p> <p>21 Q Okay. So you made the sole decision when</p> <p>22 you looked at documents or text messages on your</p> <p>23 phone as to whether or not they were responsive or</p> <p>24 not?</p> <p>25 A No, that is incorrect.</p>

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<p>65</p> <p>1 Q Okay. You made the decision of which</p> <p>2 documents to share with your attorneys to</p> <p>3 determine whether or not they were responsive?</p> <p>4 A I made the decision as to which documents</p> <p>5 to provide to my attorneys for them to make the</p> <p>6 determination as to responsiveness and/or</p> <p>7 privilege.</p> <p>8 MR. CLUBOK: And I think, for the record,</p> <p>9 we've received zero documents from Mr. Leventon in</p> <p>10 production. Correct me if I'm wrong, Ms. Smith,</p> <p>11 and I don't think we received a privilege log so</p> <p>12 we're going to want to work on that.</p> <p>13 MS. SMITH: That's incorrect. I did</p> <p>14 provide a privilege log.</p> <p>15 MR. CLUBOK: Okay. I apologize if that's</p> <p>16 the case. Ms. McLaughlin will know better than I</p> <p>17 so we'll double-check that at the break.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q When was the last time you spoke with</p> <p>20 Mr. Sevilla?</p> <p>21 A Maybe two weeks ago, week and a half.</p> <p>22 Q When was the last time you spoke with</p> <p>23 Mr. DiOrio?</p> <p>24 A Yesterday.</p> <p>25 Q Did you speak about this matter at all?</p>	<p>67</p> <p>1 was working with Skyview Group but she wasn't yet</p> <p>2 on maternity leave?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I don't believe so.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Have you spoken to her about any</p> <p>7 work-related issues since she left HCM?</p> <p>8 A No. We just talk about her babies.</p> <p>9 Q Okay. How long is her maternity leave?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 A I don't know, Mr. Clubok.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Do you have a --</p> <p>14 A Her maternity leave is whatever is</p> <p>15 necessary and appropriate for a woman who's had</p> <p>16 twins, and that is not a place where a man will</p> <p>17 venture to render an opinion.</p> <p>18 Q It depends if they're, I suppose, HR. Is</p> <p>19 Mr. Collins your HR person?</p> <p>20 A To be clear, I'm not in HR so I would not</p> <p>21 venture an opinion as to what is the appropriate</p> <p>22 length of maternity leave for a woman who's had</p> <p>23 twins.</p> <p>24 Q Who decides that at Skyview Group?</p> <p>25 A I don't know.</p>
<p>66</p> <p>1 A Very briefly.</p> <p>2 Q What did you say?</p> <p>3 A We just exchanged basically the dates when</p> <p>4 we were going to be deposed.</p> <p>5 Q Anything else?</p> <p>6 A That's pretty much it.</p> <p>7 Q When was the last time you spoke with</p> <p>8 Ms. Irving?</p> <p>9 A It's been months.</p> <p>10 Q Ms. Irving works at Skyview Group?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A Yes, but she's on maternity leave.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q When did she start working there?</p> <p>15 A I don't know.</p> <p>16 Q Did you hire her?</p> <p>17 A Did I hire her? No.</p> <p>18 Q Was she ever there before she went on</p> <p>19 maternity leave after her employment at HCM?</p> <p>20 A I don't know.</p> <p>21 Q Did you ever -- have you talked to her at</p> <p>22 all since she left HCM?</p> <p>23 A Yes.</p> <p>24 Q Okay. And when you spoke with her, was</p> <p>25 there ever a time when you spoke with her that she</p>	<p>68</p> <p>1 Q Is Mr. Collins in the HR group?</p> <p>2 A I believe he's the head of HR.</p> <p>3 MR. CLUBOK: This is probably a good time</p> <p>4 to take a break if you guys want to take a break.</p> <p>5 THE WITNESS: We can keep going.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q In that case, then, I'll ask you this?</p> <p>8 THE WITNESS: They want a break.</p> <p>9 MS. SMITH: I would like to take a break.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q You know what? I'm going to ask one last</p> <p>12 thing to just finish this topic up and I think it</p> <p>13 will then -- to really start -- to prepare for</p> <p>14 this deposition, did you do anything other than</p> <p>15 meet with your lawyers?</p> <p>16 A No.</p> <p>17 Q Did you review any documents at all in</p> <p>18 anticipation of this deposition?</p> <p>19 A No.</p> <p>20 Q Did you look at any documents this</p> <p>21 morning?</p> <p>22 A No.</p> <p>23 Q And roughly how long did you spend with</p> <p>24 your attorneys preparing for this deposition,</p> <p>25 total?</p>

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<p>69</p> <p>1 A Maybe five or six hours.</p> <p>2 Q When was that?</p> <p>3 A Monday.</p> <p>4 Q Okay.</p> <p>5 MR. CLUBOK: That's it. Let's take our</p> <p>6 break.</p> <p>7 THE VIDEOGRAPHER: We are off the record</p> <p>8 at 11:01 a.m.</p> <p>9 (Recess taken from 11:01 a.m. CDT to</p> <p>10 11:19 a.m. CDT)</p> <p>11 THE VIDEOGRAPHER: The time is 11:19 a.m.</p> <p>12 We are back on the record.</p> <p>13 MS. SMITH: Normally the practice on these</p> <p>14 depositions of nonparties is if someone else wants</p> <p>15 to ask questions, then they allocate between</p> <p>16 themselves the time. And so we are presenting</p> <p>17 Mr. Leventon today for his seven hours and today</p> <p>18 is the day. We had a motion to compel and a</p> <p>19 motion to quash and nowhere during that time did</p> <p>20 the debtor raise any indication that they needed</p> <p>21 separate depositions. We're not presenting</p> <p>22 Mr. Leventon for 14 hours. So you might want to</p> <p>23 check on the break or at lunch and see. We -- you</p> <p>24 know, we objected yesterday, but we gave</p> <p>25 Mr. Feinstein his time and allowed him to answer</p>	<p>71</p> <p>1 We're now returned to our regularly scheduled</p> <p>2 program.</p> <p>3 Mr. Leventon, you're still under oath,</p> <p>4 right?</p> <p>5 A Yes, sir.</p> <p>6 Q Okay. Sir, you were aware that UBS filed</p> <p>7 litigation in 2009 against Highland's affiliated</p> <p>8 entities, correct?</p> <p>9 A So aware that UBS had filed litigation</p> <p>10 against Highland Capital Management and two funds</p> <p>11 managed by it.</p> <p>12 Q Well, it was Highland Capital Management</p> <p>13 plus CDO Fund and SOHC, as colloquial names for</p> <p>14 those funds, without laying out their whole formal</p> <p>15 names, correct?</p> <p>16 A Those would be the colloquial names I</p> <p>17 would use, but if we want to be specific, we</p> <p>18 probably should identify the entities.</p> <p>19 Q Yeah. And there may have been a number of</p> <p>20 entities and subs, but it certainly included</p> <p>21 Highland CDO Opportunity Master Fund, LP, which we</p> <p>22 shorthanded would refer to as CDO Fund throughout</p> <p>23 the litigation; is that fair?</p> <p>24 A I believe that was the CDO Fund entity</p> <p>25 that was the named defendant in that matter, yes.</p>
<p>70</p> <p>1 questions and we're willing to do that again</p> <p>2 today.</p> <p>3 MR. CLUBOK: Okay. And, you know, it's --</p> <p>4 I don't mind if you-all want to make your record</p> <p>5 to use this time. We won't count this as part of</p> <p>6 the deposition, this dispute.</p> <p>7 MS. SMITH: That's fine.</p> <p>8 MR. CLUBOK: My -- our -- we have no view</p> <p>9 on it yesterday whether, you know, we were</p> <p>10 perfectly fine since we had time left to give that</p> <p>11 time to the debtor. It's between you-all to work</p> <p>12 out whether -- you know, whether and when the</p> <p>13 debtor gets to depose Mr. Leventon. From our</p> <p>14 perspective, but anyway, I don't know if</p> <p>15 Mr. Feinstein wants to make some other comment on</p> <p>16 the record, it's fine.</p> <p>17 MR. FEINSTEIN: Only briefly. It's not</p> <p>18 appropriate to debate this on the record, but I</p> <p>19 would refer counsel to her very fierce statements</p> <p>20 yesterday about -- she's done a 180, but we can</p> <p>21 take this up off line. Thank you. Why don't you</p> <p>22 proceed, Andy.</p> <p>23 MR. CLUBOK: Okay. Thank you.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Sorry for that commercial interruption.</p>	<p>72</p> <p>1 Q And also there was Highland Special</p> <p>2 Opportunities Holding Company, which we routinely</p> <p>3 referred to as SOHC throughout that litigation,</p> <p>4 correct?</p> <p>5 A That's correct.</p> <p>6 Q And then there was also as defendant in</p> <p>7 that litigation an entity called Highland</p> <p>8 Financial Partners, which we often called HFP,</p> <p>9 correct?</p> <p>10 A Not in 2009, no.</p> <p>11 Q Right. But -- okay. The litigation by --</p> <p>12 certainly by 2012 included as defendants, Highland</p> <p>13 Financial Partners, which we often referred to as</p> <p>14 HFP?</p> <p>15 A Highland Financial Partners, LP, which we</p> <p>16 would refer to as HFP, yes, was a defendant.</p> <p>17 Q And Strand was also a defendant in the</p> <p>18 litigation ultimately, correct?</p> <p>19 A Strand Advisors, Inc., I believe that's</p> <p>20 correct.</p> <p>21 Q Which we would shorthand by just referring</p> <p>22 to often as Strand?</p> <p>23 A That may have been your practice.</p> <p>24 Q There was also an entity that was called</p> <p>25 Highland Credit Opportunities CDO, LP, that we</p>

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<p>73</p> <p>1 sometimes referred to as Credit Opportunity or</p> <p>2 Credit Opps, correct?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I believe that's right, but I probably</p> <p>5 would need to see the style of the case in order</p> <p>6 to identify the exact entity because a lot of them</p> <p>7 had very similar names.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And that entity was later changed to a</p> <p>10 name that we have shorthanded since as</p> <p>11 Multi Strat, correct?</p> <p>12 A Again, I would need to look at the style</p> <p>13 of the case to match up the exact entities.</p> <p>14 Q Okay. But colloquially as, you know, you</p> <p>15 were on this litigation for a long time --</p> <p>16 A Yes.</p> <p>17 Q -- we spoke many times, lots of e-mails</p> <p>18 and documents and hallway conversations, including</p> <p>19 during court, and fair to say that there was an</p> <p>20 entity that we sometimes shorthand as Highland</p> <p>21 Credit Opportunities that we've since shorthanded</p> <p>22 as Multi Strat?</p> <p>23 A That's fair to say, yes.</p> <p>24 Q Okay. Thanks. Now, what role did you</p> <p>25 play in managing that litigation for HCM and the</p>	<p>75</p> <p>1 the person who took responsibility that the</p> <p>2 responses to UBS's discovery requests in that</p> <p>3 litigation during that time period of roughly 2011</p> <p>4 to 2013 were properly answered?</p> <p>5 A Kevin Rabinowitz</p> <p>6 Q Who was outside counsel at the time?</p> <p>7 A Correct.</p> <p>8 Q Okay. And who inside was primarily</p> <p>9 responsible for managing your outside counsel to</p> <p>10 ensure that they did that work properly?</p> <p>11 A I was primarily responsible at that point</p> <p>12 for managing the litigation from the in-house</p> <p>13 side.</p> <p>14 Q And did that responsibility for managing</p> <p>15 the -- by the way, if I say the UBS litigation in</p> <p>16 New York, will you understand that I mean this</p> <p>17 case that we referred to where we've identified</p> <p>18 the parties?</p> <p>19 A Yes, but I think there were also like</p> <p>20 three different cause numbers at some point.</p> <p>21 Q Right. There was different causes that</p> <p>22 were all ultimately consolidated into one matter.</p> <p>23 And can I collectively refer to those actions as</p> <p>24 the UBS New York litigation against Highland, just</p> <p>25 to -- to shorthand it?</p>
<p>74</p> <p>1 other affiliates?</p> <p>2 A During what time period?</p> <p>3 Q From 2009 till you were terminated?</p> <p>4 A I didn't have a consistent role during</p> <p>5 that entire period of time.</p> <p>6 Q Okay. In 2011, when you got your</p> <p>7 promotion to assistant general counsel, from that</p> <p>8 period for the next two years, you were the</p> <p>9 primary person responsible for responding to the</p> <p>10 UBS's discovery requests in that litigation,</p> <p>11 correct?</p> <p>12 A I don't think that's how I would phrase</p> <p>13 it, no.</p> <p>14 Q Well, who was primarily responsible for</p> <p>15 responding to UBS's discovery requests in the UBS</p> <p>16 litigation in or about 2011 through 2013?</p> <p>17 A I don't know that you can identify a</p> <p>18 single person that would have been responsible for</p> <p>19 responding to discovery.</p> <p>20 Q There was no person at HCM who took</p> <p>21 responsibility ultimately for ensuring that</p> <p>22 document requests were properly responded to;</p> <p>23 that's what you're saying?</p> <p>24 A That's not my testimony.</p> <p>25 Q Who, to the best of your knowledge, was</p>	<p>76</p> <p>1 A You can. Just to be clear, there were --</p> <p>2 before you said Highland and you meant just</p> <p>3 Highland Capital Management, LP. There were lots</p> <p>4 of other entities involved.</p> <p>5 Q Right. So if we call it the UBS New York</p> <p>6 litigation against Highland and its affiliates,</p> <p>7 you'll know what I'm referring to, correct?</p> <p>8 A Yes.</p> <p>9 Q And you were primarily responsible for</p> <p>10 supervising that litigation from 2011 through at</p> <p>11 least the bankruptcy?</p> <p>12 A That's not correct.</p> <p>13 Q Okay. When were you the primary person</p> <p>14 responsible for supervising that litigation,</p> <p>15 during what time frame?</p> <p>16 A I'm trying to remember exactly when I</p> <p>17 relinquished day-to-day management, but for a</p> <p>18 substantial period of time several years. That</p> <p>19 was done by Jason Vancour.</p> <p>20 Q And that was during what period of time?</p> <p>21 A I'm struggling to remember. It would have</p> <p>22 been somewhere in 2012 to '15 or so.</p> <p>23 Q And then you resumed day-to-day</p> <p>24 supervision after that?</p> <p>25 A I don't remember if we handed it off to</p>

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<p>77</p> <p>1 one other person or if I took it straight back 2 over. 3 Q But you came to resume your role as the 4 day-to-day supervisor of that litigation prior to 5 it going to trial, correct? 6 A Correct. 7 Q And you were the day-to-day supervisor of 8 that litigation during the trial, correct? 9 A Yes. 10 Q And that was a trial that ultimately 11 resulted in a roughly \$1 billion judgment against 12 two of the defendants in that case, correct? 13 A Correct. 14 Q And you, during that trial, came every 15 single day to court and actively directed the 16 outside counsel who were the courtroom advocates 17 for the defendants in that case, correct? 18 MS. SMITH: Objection to form. 19 A I mean, I don't know that I directed them, 20 but we were part of a team together that was 21 working cooperatively for the clients. 22 BY MR. CLUBOK: 23 Q Well, did they take your direction during 24 the trial? 25 A They took my direction sometimes and I</p>	<p>79</p> <p>1 Q By whom? 2 A By Mr. Ellington. 3 Q Did you ever directly inform Mr. Dondero 4 about the trial or the litigation? 5 A I don't remember if I did or not. I don't 6 recall. 7 Q How do you know Mr. Ellington did that? 8 A I only have a very general recollection 9 that he indicated that Mr. Dondero had been kept 10 apprised. 11 Q He indicated that to you? 12 A Correct. 13 Q And after the trial, did you communicate, 14 in words or substance, that it was likely that UBS 15 would get a significant judgment? 16 A I don't remember how I communicated -- 17 what I communicated at that point. 18 Q Did you have any recommendation as to 19 whether or not UBS would likely obtain a judgment 20 after sitting through the trial? 21 A I don't recall if I did one way or 22 another. 23 Q Did you have a belief at the time as to 24 whether UBS would likely get a judgment based on 25 what you saw at the trial?</p>
<p>78</p> <p>1 took theirs sometimes. 2 Q Did you report daily during that trial to 3 Scott Ellington? 4 A I don't recall if I did or not. 5 Q Did you regularly report to Scott 6 Ellington throughout the course of that trial? 7 A I believe that's fair to say, yes. 8 Q Did you regularly report to anyone else 9 other than Scott Ellington about the -- how the 10 trial was going? 11 A I don't believe so, no. 12 Q And were you also responsible for 13 supervising the post-trial proceedings, the 14 briefing and other communications with the Court 15 in between the end of the trial and prior to the 16 decision by the Court? 17 A I don't remember what the post-trial 18 briefing was or not. I don't remember what the 19 post-trial briefing was. 20 Q Was there anyone else at Highland who was 21 responsible from the in-house perspective of 22 dealing with the litigation proceedings in between 23 trial and judgment other than yourself? 24 A Mr. Ellington would have had some role and 25 then Mr. Dondero would have been kept informed.</p>	<p>80</p> <p>1 A I mean, it was -- it was pretty complex, 2 so there were a variety of different possible 3 outcomes that I was considering. 4 Q Yeah, but you saw it coming, that there 5 would likely be a significant judgment given what 6 went on at the trial; is that fair? 7 MS. SMITH: Objection to form. 8 A Actually not necessarily, no. 9 BY MR. CLUBOK: 10 Q It's true that you spoke with 11 Mr. Ellington at some point where Mr. Ellington 12 acknowledged it was likely to be a significant 13 judgment based on what happened at the trial; 14 isn't that true? 15 MS. SMITH: Objection to form. My 16 understanding, there's two parts to the trial. I 17 just want to make sure what we're talking about. 18 BY MR. CLUBOK: 19 Q Isn't it true that you had discussions 20 with Mr. Ellington at some point where, in words 21 or substance, you discussed the likelihood that 22 the outcome of the first phase of the trial would 23 be a significant judgment in UBS's favor? 24 A So just to be clear, we're talking about 25 the Phase 1 trial that took place against SOHC and</p>

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<p>81</p> <p>1 CDO Fund, correct?</p> <p>2 Q Correct.</p> <p>3 A I don't remember if I did tell him that or</p> <p>4 not. I mean, we spoke about kind of all of the</p> <p>5 legal permutations of how the Court might rule.</p> <p>6 Q Right. But in words or substance, during</p> <p>7 that discussion, whether you told him or he told</p> <p>8 you, you discussed the likelihood that UBS was</p> <p>9 going to get a meaningful judgment against</p> <p>10 CDO Fund and SOHC as a result of that Phase 1</p> <p>11 trial, correct?</p> <p>12 A I don't recall. I mean, we certainly</p> <p>13 discussed it as a possibility, but in terms of how</p> <p>14 we weighed likelihoods, I just don't remember.</p> <p>15 Q The trial did not go well for the</p> <p>16 defendants, correct?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A The outcome did not go as the defendants</p> <p>19 had hoped. I actually thought that our trial</p> <p>20 counsel performed fairly well.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Fair enough. I'm not asking you how your</p> <p>23 trial counsel performed. But in terms of the</p> <p>24 facts that were revealed at trial that led to the</p> <p>25 judge's decision, those were facts that were not</p>	<p>83</p> <p>1 litigation?</p> <p>2 A At various points in time I was asked to</p> <p>3 assist in preparation kind of settlement-related</p> <p>4 materials, but the actual decision-making was</p> <p>5 never mine.</p> <p>6 Q Whose was it?</p> <p>7 A Ultimately, it would have been</p> <p>8 Mr. Dondero's.</p> <p>9 Q Did you ever provide any advice regarding</p> <p>10 the wisdom of settling the case?</p> <p>11 A I don't recall if I did or not.</p> <p>12 Q Did you ever provide any advice regarding</p> <p>13 the merits of the case?</p> <p>14 A I'm certain I did that, yes.</p> <p>15 Q Who did you provide that advice to?</p> <p>16 A It would really depend on the time period.</p> <p>17 Q You said part of the job you always did</p> <p>18 at -- strike that.</p> <p>19 As part of the job that you did over the</p> <p>20 years at Highland was due diligence on litigation,</p> <p>21 correct?</p> <p>22 A That doesn't accurately reflect my</p> <p>23 testimony.</p> <p>24 Q Shorthand it, but part of the job you</p> <p>25 did, for example, for SAS was due diligence on</p>
<p>82</p> <p>1 favorable generally to the positions --</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q -- that the defendants had been taking,</p> <p>5 correct?</p> <p>6 A I'll let the court judgment speak for</p> <p>7 itself.</p> <p>8 Q Did you play any role ever in analyzing</p> <p>9 whether or not Highland and its affiliates should</p> <p>10 settle with UBS?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 A I never -- I never analyzed whether they</p> <p>13 should settle, no.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. You never analyzed whether or not</p> <p>16 Highland -- if I say the Highland defendants, is</p> <p>17 that sufficient acceptable shorthand for all the</p> <p>18 defendants in the case?</p> <p>19 A Yes.</p> <p>20 Q And all the defendants in the case were</p> <p>21 either Highland or Highland affiliates, correct?</p> <p>22 A That's correct.</p> <p>23 Q Okay. So did you ever perform any</p> <p>24 analysis as to whether or not the Highland</p> <p>25 defendants should settle with UBS in the New York</p>	<p>84</p> <p>1 litigation they were considering funding?</p> <p>2 A Well, I knew SAS was affiliated with</p> <p>3 Mr. Dondero somehow. I didn't -- well, let me</p> <p>4 rephrase it. I knew Mr. Dondero was involved in</p> <p>5 SAS and had approved its operations in some way.</p> <p>6 I didn't know how he was related to it. And so</p> <p>7 from my seat at Highland, I analyzed cases that</p> <p>8 SAS could potentially provide litigation funding</p> <p>9 for.</p> <p>10 Q Right. And when you say analyzed, you</p> <p>11 would be asked to review the matter and give your</p> <p>12 opinion about the relative merits of the case?</p> <p>13 A Yes.</p> <p>14 Q And did you consider yourself to be good</p> <p>15 at that job of analyzing a case and giving an</p> <p>16 opinion as to the merits?</p> <p>17 A I mean, we all hope we're pretty good at</p> <p>18 our jobs, don't we?</p> <p>19 Q We all hope. Did you consider yourself to</p> <p>20 be good at that job?</p> <p>21 A I did it to the best of my ability. I</p> <p>22 think I'm pretty good at my job generally.</p> <p>23 Q And specifically were you good at</p> <p>24 analyzing the merits of litigation -- are you</p> <p>25 okay?</p>

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<p>85</p> <p>1 A Yeah.</p> <p>2 Q Do you need a break?</p> <p>3 A No.</p> <p>4 Q Are you sure?</p> <p>5 A Yeah.</p> <p>6 MR. CLUBOK: Let's go off the record.</p> <p>7 A No, we're not. Let's keep going.</p> <p>8 MR. CLUBOK: Let's go off the record.</p> <p>9 THE VIDEOGRAPHER: We are off the record</p> <p>10 at 11:39 a.m.</p> <p>11 (Recess taken from 11:39 a.m. CDT to</p> <p>12 11:47 a.m. CDT)</p> <p>13 THE VIDEOGRAPHER: The time is 11:47 a.m.</p> <p>14 We are back on the record.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Sir, did you believe that you were good at</p> <p>17 analyzing the merits of litigation?</p> <p>18 A Yes.</p> <p>19 Q And did you ever -- were you ever asked to</p> <p>20 analyze the merits of the UBS New York litigation</p> <p>21 against the Highland and its affiliates?</p> <p>22 A Yes.</p> <p>23 Q And did you ever give a recommendation, in</p> <p>24 words or substance, that UBS was likely to</p> <p>25 prevail, at least in part in that litigation?</p>	<p>87</p> <p>1 A No, I believe it probably was</p> <p>2 Mr. Ellington and Mr. Dondero.</p> <p>3 Q Directly to Mr. Dondero?</p> <p>4 A Probably, but I can't say for certain.</p> <p>5 Q Would that have been oral or written?</p> <p>6 A I don't know.</p> <p>7 Q When did you first make that</p> <p>8 recommendation?</p> <p>9 A I don't know. It was a very lengthy</p> <p>10 litigation.</p> <p>11 Q Did you ever make that recommendation</p> <p>12 prior to trial?</p> <p>13 A I don't recall if I did or not.</p> <p>14 Q Well, you were going to trial on a billion</p> <p>15 dollar -- yeah, strike that.</p> <p>16 You were going to trial on a roughly</p> <p>17 billion dollar claim including interest. Prior to</p> <p>18 stepping into the courtroom for that Phase 1</p> <p>19 trial, had you made a recommendation that</p> <p>20 liability was likely?</p> <p>21 A Immediately prior to stepping into trial?</p> <p>22 Q At any time prior to going to Phase 1</p> <p>23 trial, did you recommend to Mr. Ellington and</p> <p>24 Mr. Dondero that liability was likely to be</p> <p>25 established against SOHC and CDO Fund by UBS?</p>
<p>86</p> <p>1 A I don't recall my exact recommendations,</p> <p>2 but I probably did.</p> <p>3 Q And --</p> <p>4 A At least on some of the claims, but not on</p> <p>5 others.</p> <p>6 Q Which claims?</p> <p>7 A I don't recall. There were a lot of them.</p> <p>8 Q Do you recall if you gave a recommendation</p> <p>9 that UBS was likely to prevail in Phase 1 against</p> <p>10 SOHC and CDO Fund for the claims that were tried?</p> <p>11 A Well, it's hard to say the answer because</p> <p>12 prevailing had a lot of different meanings in that</p> <p>13 context.</p> <p>14 Q Let's start with liability and then we'll</p> <p>15 talk about damages. Did you ever give a</p> <p>16 recommendation that UBS was likely to win on its</p> <p>17 breach of contract claims against CDO Fund and</p> <p>18 SOHC in Phase 1?</p> <p>19 A Yes, I did.</p> <p>20 Q And what was that recommendation?</p> <p>21 A That liability was likely to be found.</p> <p>22 Q Who did you make that to?</p> <p>23 A I don't recall. It certainly would have</p> <p>24 been -- well, I don't recall who it was.</p> <p>25 Q You said it certainly would have been?</p>	<p>88</p> <p>1 A My testimony was that I believed that I</p> <p>2 probably stated to Mr. Ellington and Mr. Dondero</p> <p>3 that SOHC and CDO Fund were likely to be found</p> <p>4 liable on breach of contract.</p> <p>5 Q And that was before the trial?</p> <p>6 A Right. But I don't know when exactly.</p> <p>7 Q Okay.</p> <p>8 A Some time period which was -- I mean, that</p> <p>9 covers like nine years.</p> <p>10 Q Right. But at some point summary judgment</p> <p>11 was decided largely in UBS's favor, correct?</p> <p>12 A With respect to those two funds, the</p> <p>13 answer is yes. With respect to the other</p> <p>14 entities, not necessarily.</p> <p>15 Q Okay. But with respect to those two</p> <p>16 funds, UBS prevailed in the summary judgment</p> <p>17 briefing?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 A I know it was prepared to go to trial. It</p> <p>20 was -- there were claims going to trial. In terms</p> <p>21 of what the orders say, I'll let them speak for</p> <p>22 themselves.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q At any time after the summary judgment</p> <p>25 decision but before trial started, did you make a</p>

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<p>89</p> <p>1 recommendation to Mr. Ellington and Mr. Dondero</p> <p>2 that liability was likely to be established</p> <p>3 against SOHC and CDO Fund?</p> <p>4 A I really don't recall.</p> <p>5 Q As you sit here today, you have no idea if</p> <p>6 any time after summary judgment was decided</p> <p>7 against SOHC and CDO Fund but before the case for</p> <p>8 roughly a billion dollars was to be tried, whether</p> <p>9 you made a recommendation as to your view of the</p> <p>10 merits of liability?</p> <p>11 A I'm not saying that I didn't. I'm just</p> <p>12 saying, sitting here today, I don't remember.</p> <p>13 Q Did you -- what was the reaction of</p> <p>14 Mr. Ellington when you made the recommendation</p> <p>15 prior to going to trial, that liability was likely</p> <p>16 to be established against SOHC and CDO Fund?</p> <p>17 A Well, again, when we're talking about</p> <p>18 prior to trial, you're talking about that</p> <p>19 nine-year time period from 2009 to 2018?</p> <p>20 Q In that question I was.</p> <p>21 A Okay. We discussed the UBS case numerous</p> <p>22 times.</p> <p>23 Q Hold on. There was a whole nine-year</p> <p>24 period. From the get-go did you make a</p> <p>25 recommendation that liability was likely to be</p>	<p>91</p> <p>1 CDO Fund and SOHC for the breach of contract</p> <p>2 claims that UBS had in the New York litigation,</p> <p>3 correct?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 A That's probably fair, yes.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q And how long after coming to that belief</p> <p>8 did it take for you to make that recommendation</p> <p>9 known to Mr. Ellington and Mr. Dondero? Is that</p> <p>10 something you kept to yourself for a long time or</p> <p>11 did you fairly soon thereafter share that opinion</p> <p>12 with Mr. Ellington and Mr. Dondero?</p> <p>13 A So it's difficult for me to answer the</p> <p>14 question because at the time I was a very junior</p> <p>15 attorney. No one was really asking me for my</p> <p>16 opinion about anything. I was responsible for</p> <p>17 kind of the day-to-day grind of working on the</p> <p>18 case.</p> <p>19 Q Okay. At what point did people start</p> <p>20 asking you about your opinion on the merits of the</p> <p>21 case?</p> <p>22 A I can't pinpoint exactly, but it would</p> <p>23 have been probably after I had been at Highland</p> <p>24 three or four years.</p> <p>25 Q So sometime in the 2011 or 2012 time</p>
<p>90</p> <p>1 established against SOHC and CDO Fund?</p> <p>2 A What do you mean from the get-go?</p> <p>3 Q From the beginning of the litigation?</p> <p>4 A I wasn't employed at Highland from the</p> <p>5 beginning of the litigation.</p> <p>6 Q You started working on the matter in</p> <p>7 roughly 2011, correct?</p> <p>8 A That's not accurate, no.</p> <p>9 Q When did you start working on the matter?</p> <p>10 A Earlier than that. When I arrived in</p> <p>11 Highland in two thousand -- late September,</p> <p>12 October 2009 I started working on it.</p> <p>13 Q Okay. So from the time that you started</p> <p>14 work on litigation, what's the earliest time that</p> <p>15 you can recall, roughly, in which you came to the</p> <p>16 belief that liability would be established against</p> <p>17 CDO Fund and SOHC?</p> <p>18 A I don't recall. It would have been early</p> <p>19 on, but I don't know exactly when.</p> <p>20 Q Like as early as 2010?</p> <p>21 A I don't remember.</p> <p>22 Q Okay. But your -- when you say early on,</p> <p>23 you mean roughly within the first year of working</p> <p>24 on the matter, you came to the belief that</p> <p>25 liability was likely to be established against</p>	<p>92</p> <p>1 frame?</p> <p>2 A Maybe around then, maybe a little later</p> <p>3 than that.</p> <p>4 Q Well, was it before -- you said at some</p> <p>5 point this other individual took over the</p> <p>6 day-to-day management of the case. Remember that?</p> <p>7 A Correct.</p> <p>8 Q And prior to that, had you shared your</p> <p>9 views that you had already reached from early on,</p> <p>10 that SOHC and CDO Fund were likely to have</p> <p>11 liability established against them for the breach</p> <p>12 of contract claims that UBS had brought?</p> <p>13 A I think I probably -- I don't exactly</p> <p>14 recall, but I believe I probably discussed it with</p> <p>15 Mr. Ellington.</p> <p>16 Q What about Mr. Dondero?</p> <p>17 A At that time I don't -- I don't remember</p> <p>18 one way or another if I would have spoken to him.</p> <p>19 I was still pretty junior and so I didn't</p> <p>20 regularly converse with him.</p> <p>21 Q Okay. But then you resumed day-to-day</p> <p>22 management of the matter approximately when?</p> <p>23 A Whenever Mr. -- well, that's what I said.</p> <p>24 I don't recall because Mr. Vancour left and then I</p> <p>25 don't remember if another person took over the</p>

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<p>93</p> <p>1 case afterwards and then I took over after that</p> <p>2 person left, or if I took over directly from</p> <p>3 Mr. Vancour.</p> <p>4 Q Who was that person you're thinking of?</p> <p>5 A Jason Goldsmith.</p> <p>6 Q Certainly by the time Jason Goldsmith and</p> <p>7 Mr. Vancour had left, you had resumed day-to-day</p> <p>8 management for the UBS New York litigation against</p> <p>9 Highland, correct?</p> <p>10 A Well, those were different time periods.</p> <p>11 Mr. Vancour left first, Mr. Goldsmith left second.</p> <p>12 So after Mr. Goldsmith's departure, I certainly</p> <p>13 know -- well, after Mr. Goldsmith's departure</p> <p>14 would have been when I believe I probably would</p> <p>15 have picked up management.</p> <p>16 Q And that would have been before summary</p> <p>17 judgment briefing?</p> <p>18 A Probably. I mean, the -- I don't know.</p> <p>19 Q And at that point, at some point you --</p> <p>20 did you -- at some point you came to share your</p> <p>21 views with Mr. Dondero about the likelihood that</p> <p>22 liability would be established against SOHC and</p> <p>23 CDO Fund for its contract claims, correct?</p> <p>24 A At some point I did discuss that with him,</p> <p>25 I believe.</p>	<p>95</p> <p>1 that liability was likely to be determined against</p> <p>2 CDO Fund and SOHC?</p> <p>3 A I don't recall.</p> <p>4 Q Roughly?</p> <p>5 A It would have been more than one and</p> <p>6 probably less than five.</p> <p>7 Q Okay. And did Mr. Dondero push back?</p> <p>8 A I don't remember what he said on that.</p> <p>9 There were so many moving parts in that case, I</p> <p>10 don't know that I -- it's difficult to isolate</p> <p>11 those very specific claims against those very</p> <p>12 specific defendants as part of the conversation.</p> <p>13 Q Right. But the breach of contract was</p> <p>14 certainly a core part of the case, right?</p> <p>15 A Yes, but there were numerous what you</p> <p>16 would call core parts of the case.</p> <p>17 Q Okay. But I want to focus on the breach</p> <p>18 of contract against SOHC and CDO Fund, who were</p> <p>19 also referred to often as the counterparties to</p> <p>20 the UBS restructured warehouse agreement.</p> <p>21 A That's fair, they were.</p> <p>22 Q Okay. And those liability claims against</p> <p>23 the counterparties, with respect to those, did</p> <p>24 Mr. Dondero ever push back, in words or substance,</p> <p>25 about the likelihood of liability being</p>
<p>94</p> <p>1 Q Roughly when was that?</p> <p>2 A I don't know, sir.</p> <p>3 Q Certainly years ago, right?</p> <p>4 A Yes, it was a long time ago.</p> <p>5 Q And it was before you started working on</p> <p>6 settlement options in connection with the matter,</p> <p>7 correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A Can you clarify the question, please?</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q I don't know -- remember the exact words</p> <p>12 you used, but you said at some point you had some</p> <p>13 involvement with -- contributed to some settlement</p> <p>14 analysis related to the case. I'm not trying to</p> <p>15 put words in your mouth. I'm paraphrasing.</p> <p>16 A That's fair. I did contribute to a</p> <p>17 settlement analysis on the case.</p> <p>18 Q Before contributing to that settlement</p> <p>19 analysis, fair to say you had already conveyed</p> <p>20 your views directly to Mr. Dondero that liability</p> <p>21 was likely to be found in UBS's favor against SOHC</p> <p>22 and CDO Fund?</p> <p>23 A I just don't remember, sir.</p> <p>24 Q How many times did you have discussions</p> <p>25 with Mr. Dondero in which you expressed your view</p>	<p>96</p> <p>1 established?</p> <p>2 A Yes, he did.</p> <p>3 Q And what did he say?</p> <p>4 A I don't remember the specific words, but I</p> <p>5 definitely remember he pushed back.</p> <p>6 Q And ultimately did he convey whether or</p> <p>7 not he accepted your recommendation?</p> <p>8 A Well, the case never settled. The case</p> <p>9 never settled, so I don't know what to say about</p> <p>10 that.</p> <p>11 Q Yeah, but did he ever -- at the end, did</p> <p>12 you come away with the impression that he accepted</p> <p>13 that liability against those two entities with</p> <p>14 respect to the breach of contract claims was more</p> <p>15 likely than not?</p> <p>16 A I don't know that he ever accepted that,</p> <p>17 no.</p> <p>18 Q Did Mr. Ellington?</p> <p>19 A I don't know if he did or not.</p> <p>20 Q Did you ever weigh in -- so we've talked</p> <p>21 about liability with respect to these claims. Did</p> <p>22 you ever come to an opinion about likely damages</p> <p>23 that would be awarded if liability were</p> <p>24 established?</p> <p>25 A I have a variety of opinions, but I don't</p>

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<p>97</p> <p>1 think there was one in particular that I had as</p> <p>2 the most likely outcome.</p> <p>3 Q What were the -- how many likely -- did</p> <p>4 you have no view, like there's three or four</p> <p>5 outcomes and each were equally likely or were</p> <p>6 there two outcomes that were equally likely or you</p> <p>7 just had -- you couldn't -- even with your ability</p> <p>8 to analyze litigation, had no idea what was going</p> <p>9 to happen with damages?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A My recollection actually was that there</p> <p>12 were nine separate independent scenarios.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Nine?</p> <p>15 A Yes.</p> <p>16 Q And were these laid out in a document?</p> <p>17 A Yes.</p> <p>18 Q And who did you present these to?</p> <p>19 A Mr. Ellington.</p> <p>20 Q And Mr Dondero?</p> <p>21 A I don't remember if I showed it to</p> <p>22 Mr. Dondero or not.</p> <p>23 Q When did you prepare that?</p> <p>24 A It would have been -- it incorporated the</p> <p>25 expert reports, so it would have been subsequent</p>	<p>99</p> <p>1 A I'm familiar with that, yes.</p> <p>2 Q And you're certainly familiar with the</p> <p>3 process of looking at different scenarios and</p> <p>4 coming up with an expected range of outcomes in</p> <p>5 terms --</p> <p>6 A Yes.</p> <p>7 Q Did you ever, in words or substance, come</p> <p>8 up with an expected likely range of outcomes for</p> <p>9 damages in connection with the breach of contract</p> <p>10 claims?</p> <p>11 A I don't think I did, no.</p> <p>12 Q And did you ever, in words or substance,</p> <p>13 convey anything about your views on the relative</p> <p>14 likelihood of one scenario versus another in terms</p> <p>15 of damages?</p> <p>16 A I just generally -- I may have, but I</p> <p>17 don't recall having done so.</p> <p>18 Q And did you ever, in words or substance,</p> <p>19 have a belief that likely it would be damages in</p> <p>20 the hundreds of millions of range or more?</p> <p>21 A Those were certainly possible scenarios,</p> <p>22 but I don't recall doing a probability analysis as</p> <p>23 to whether they were the most likely scenarios.</p> <p>24 Q Yeah, but whether or not you did a formal</p> <p>25 probability analysis, fair to say that you and</p>
<p>98</p> <p>1 to the expert reports and prior to trial, but</p> <p>2 where exactly, I don't know. But the document's</p> <p>3 on the debtor's system, which you can check the</p> <p>4 metadata.</p> <p>5 Q What was it called?</p> <p>6 A It was an Excel spreadsheet. I don't</p> <p>7 remember what it was called.</p> <p>8 Q And do you remember -- was it the kind of</p> <p>9 thing that you -- did you assign percentage</p> <p>10 likelihood to each of the nine scenarios?</p> <p>11 A I don't believe I did on that sheet, no.</p> <p>12 Q Did you ever?</p> <p>13 A I don't believe -- well, I don't recall if</p> <p>14 I did or not just because there were, I don't</p> <p>15 know, maybe 12 different line items that went into</p> <p>16 damages and then it depended on about six or seven</p> <p>17 different rulings of the Court as to which one</p> <p>18 would be incorporated or not. And so it's</p> <p>19 difficult to really come up with -- to say how I</p> <p>20 was thinking about it at the time because you're</p> <p>21 looking at -- I mean, it's literally an Excel</p> <p>22 matrix that was more than a screen full.</p> <p>23 Q Right. But you're aware of -- you're</p> <p>24 familiar with Monte Carlo simulations in terms of</p> <p>25 the context of analyzing litigation outcomes?</p>	<p>100</p> <p>1 Mr. Ellington at various times discussed the</p> <p>2 general likelihood that the damages in the case</p> <p>3 were likely to be in excess of \$100 million?</p> <p>4 A We certainly discussed it as a</p> <p>5 possibility. I don't know that we agreed that it</p> <p>6 was a probability.</p> <p>7 Q Well, Mr. Ellington conveyed to you, in</p> <p>8 words or substance, that he believed it was more</p> <p>9 likely than not that ultimately damages in excess</p> <p>10 of \$100 million would be awarded in UBS's favor</p> <p>11 with respect to the breach of contract claims</p> <p>12 against SOHC and CDO Fund, correct?</p> <p>13 A He may have. I don't recall if he did or</p> <p>14 not.</p> <p>15 Q And did you ever convey, in words or</p> <p>16 substance, to anyone, that you believed it was</p> <p>17 more likely than not that the damages that would</p> <p>18 be awarded in UBS's favor with respect to the</p> <p>19 breach of contract claims against SOHC and</p> <p>20 CDO Fund would likely be in excess of \$100</p> <p>21 million?</p> <p>22 A I very well might have, but I don't recall</p> <p>23 having done so.</p> <p>24 Q You certainly believed that prior to the</p> <p>25 trial, correct?</p>

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<p>101</p> <p>1 A I don't think that's fair to say, no. I 2 thought we actually had really good arguments on 3 the synthetic warehouse. 4 Q Okay. So you believe -- so you said you 5 were good at your job, but you believed it was 6 more likely than not that the ultimate damages 7 would be less than \$100 million total? 8 A I didn't say that, Counselor. Your 9 question was whether or not I believed in the 10 arguments we were making and I did, which would 11 have knocked damages well below 100 million. 12 Q No, I never asked you about the -- whether 13 you believed in the arguments. That was a concept 14 you introduced. I'm looking at the transcript. 15 Let me ask the question again. 16 Taking into account the argument you're 17 making and the argument UBS was making and your 18 ability to analyze litigation, take all of that 19 and the work you did on the case, everything that 20 you had done, fair to say that at some point prior 21 to trial, you came to the belief that it was more 22 likely than not that damages in excess of 23 \$100 million would be awarded in UBS's favor with 24 respect to the breach of contract claims against 25 CDO Fund and SOHC?</p>	<p>103</p> <p>1 including but not limited to the synthetic 2 warehouse agreement argument, which would have 3 dropped damages below \$100 million. 4 Q That's not true, is it? Even if you had 5 won the synthetic warehouse agreement, the total 6 damages still would have been in excess of 7 100 million, unless you won some other theories; 8 isn't that true? 9 MS. SMITH: Objection to form. 10 A That may be your testimony, sir. 11 BY MR. CLUBOK: 12 Q Well, the damages on the nonsynthetic 13 warehouse that were claimed in the case were well 14 in excess of \$100 million, correct? 15 A I'm sorry, Mr. Clubok. I'm not in a 16 position to debate the merits of the case that we 17 tried together. I'm just recalling the 18 arguments -- that we had arguments that would 19 knock it down below 100 million. And among those 20 arguments were the synthetic warehouse agreement 21 arguments. 22 Q Okay. I didn't ask you to debate the 23 merits. Again, you're -- please don't introduce 24 concepts that I didn't ask. My simple question is 25 the damages that were claimed on the cash</p>
<p>102</p> <p>1 A I don't recall having had that thought. 2 Q So prior to trial was it your belief that 3 it was more likely than not that the total 4 damages -- well, strike that. 5 You've said that you believed that 6 liability would be established. That you agree 7 prior to trial you believed was more likely than 8 not based on the work you had done, correct? 9 A To be specific, I believed that liability 10 was more likely than not to be proven against 11 CDO Fund and SOHC on the breach of contract 12 claims. 13 Q Right. And -- 14 A Which were the ones tried in Phase 1. 15 Q Right. And what was tried in Phase 1 was 16 the liability and the damages with respect to 17 those claims, correct? 18 A Yes. 19 Q Okay. So prior to trial was it your 20 belief that it was more likely than not that 21 despite liability being likely, the total damages 22 would be less than \$100 million? 23 A I just don't recall which way -- what my 24 risk analysis was at the time, but I do remember 25 having a great deal of faith in certain arguments,</p>	<p>104</p> <p>1 warehouse were well in excess of \$100 million; 2 isn't that true? 3 A Yes, assuming that UBS won all of its 4 arguments on the cash warehouse and lost on the 5 synthetic, I think that -- my recollection is it 6 may have been above 100 million. I honestly don't 7 remember. 8 Q Okay. And again, you -- as you sit here 9 today, your testimony is even though you remember 10 believing and giving the advice on liability, you 11 don't remember if you had any belief as to whether 12 it was more likely than not that total damages 13 would be above or below \$100 million prior to the 14 Phase 1 trial? 15 A That's correct, because the damages issue 16 was fundamentally a series of math problems that 17 were determined by experts, and so I don't know 18 that I necessarily had a conclusion about those. 19 Q You don't know if you did or you don't 20 remember if you did? 21 A I just don't remember if I did. 22 Q Okay. Were you ever asked by anyone to 23 run that analysis or to give your opinion on what 24 the likely damages would be, given your belief 25 that liability was likely to be established?</p>

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<p>105</p> <p>1 A I would have to speculate if I did or not.</p> <p>2 Q I'm not asking you to speculate. Do you</p> <p>3 remember ever being asked by anyone to give your</p> <p>4 opinion on what the likely damages would be, given</p> <p>5 your stated opinion to Mr. Ellington and</p> <p>6 Mr. Dondero that likely -- liability was likely to</p> <p>7 be established?</p> <p>8 A I just don't recall.</p> <p>9 Q Well, did anyone give an opinion on</p> <p>10 damages that you were aware of?</p> <p>11 A On a probability weighted basis, I don't</p> <p>12 remember if they did, no.</p> <p>13 Q Did any of your outside -- were any of</p> <p>14 your outside counsel ever asked to give their</p> <p>15 opinion as to whether or not damages -- strike</p> <p>16 that.</p> <p>17 Were any of your outside counsel ever</p> <p>18 asked to give their opinion as to what the likely</p> <p>19 damages would be in connection with the breach of</p> <p>20 contract claims against CDO Fund and SOHC?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 A I don't remember if they were or not.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Do you remember them ever giving any such</p> <p>25 opinion, whether they were asked to or not?</p>	<p>107</p> <p>1 A I don't know that that was necessarily the</p> <p>2 basis.</p> <p>3 Q What was?</p> <p>4 A It was a big case with big claims and</p> <p>5 going to trial inevitably has risks and it's</p> <p>6 better to limit those risks to some sort of</p> <p>7 negotiated amount than to roll the dice at trial.</p> <p>8 Q And you didn't take into account, when you</p> <p>9 gave that recommendation, your views on liability,</p> <p>10 you set those aside in making that settlement</p> <p>11 recommendation?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I'm certain that was a factor I</p> <p>14 considered, but your point -- your question, I</p> <p>15 believe, was something slightly different.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Okay. But certainly one of the factors</p> <p>18 that led you to repeatedly recommend settlement</p> <p>19 was your belief that liability was likely to be</p> <p>20 established, at least with respect to the contract</p> <p>21 claims against SOHC and CDO Fund, correct?</p> <p>22 A I don't remember if that was an essential</p> <p>23 motivating factor in my recommendation or not.</p> <p>24 Q Okay. So you, as you sit here today,</p> <p>25 don't know if your belief in liability played any</p>
<p>106</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 A I don't. It's been a long time,</p> <p>3 Mr. Clubok. I don't recall.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Did you ever, in words or substance, give</p> <p>6 any recommendation in terms of whether the case</p> <p>7 should be settled or a particular amount it should</p> <p>8 be settled for?</p> <p>9 A I think I made recommendations that it</p> <p>10 should be settled, but I don't know that I made</p> <p>11 any recommendations as to the amounts.</p> <p>12 Q Who did you recommend the case should be</p> <p>13 settled to?</p> <p>14 A Mr. Ellington.</p> <p>15 Q Anybody else?</p> <p>16 A I believe that would have been it.</p> <p>17 Q How many times roughly did you tell</p> <p>18 Mr. Ellington this case should be settled?</p> <p>19 A I don't recall. It would have been a</p> <p>20 number of times at various different points over</p> <p>21 various years.</p> <p>22 Q And that's because of your continued view</p> <p>23 from early on that liability was likely to be</p> <p>24 established at least against SOHC and CDO Funds</p> <p>25 for the breach of contract claims, correct?</p>	<p>108</p> <p>1 role in recommending the case should be settled?</p> <p>2 A That's not my testimony.</p> <p>3 Q My question -- that was your testimony,</p> <p>4 actually. That was like literally exactly your</p> <p>5 testimony. You said I don't remember if it was an</p> <p>6 essential motivating factor. Okay. Was it any</p> <p>7 factor in your recommendation? Did it factor into</p> <p>8 your recommendation in some way your views on</p> <p>9 liability?</p> <p>10 A Yes.</p> <p>11 Q Okay. But you don't know if it was an</p> <p>12 essential factor on your views of settlement,</p> <p>13 correct?</p> <p>14 A That's correct.</p> <p>15 Q Do you think, as a general matter, the</p> <p>16 likelihood of legal liability being established</p> <p>17 should be an essential factor in determining</p> <p>18 whether to settle a matter?</p> <p>19 A If you're asking for a general comment,</p> <p>20 decontextualized from the actual facts of the UBS</p> <p>21 case, yes, but I don't think that general</p> <p>22 statement applies to the UBS case.</p> <p>23 Q As a lawyer advising a company who comes</p> <p>24 to the belief that liability is likely to be</p> <p>25 established, don't you think you have a</p>

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<p>1 responsibility to say, in words or substance, 2 because we have liability here or likely have 3 liability here, we should meet our legal 4 obligations, at least through settlement, if we 5 can? 6 MS. SMITH: Objection to form. 7 A I'm sorry, Counselor. I'm not going to 8 sit here and come up with how I would render legal 9 advice generally. 10 BY MR. CLUBOK: 11 Q Well, when you say that you believe that 12 liability would likely be established, fair to say 13 that you believed that SOHC and CDO Fund had 14 contractual obligations that had been breached to 15 UBS, correct? 16 A I believe they would be found in breach of 17 contract. 18 Q Okay. Do you believe that it's 19 appropriate for a lawyer to advise their client to 20 abide by the terms of its contract? 21 MS. SMITH: Objection to form. 22 A As a general proposition -- I'm sorry. 23 I'm not going to be able to give general 24 testimony. If you'd like to ask me about a 25 specific situation, I'm happy to address that.</p>	<p>111 1 Q Okay. Mr. Dondero was the sole director 2 of SOHC at the time, correct? 3 A I think that's right, yes. 4 Q So -- did you ever -- did you think it 5 was -- so Mr. Dondero controlled SOHC during the 6 pendency of the litigation, at least until he was 7 displaced in the bankruptcy, correct? 8 A You can -- you can add -- I'm not going to 9 adopt the word control. He was a director of -- 10 he was the sole director of SOHC. That's a fact. 11 Q Okay. And did you believe it was your 12 responsibility to ever advise Mr. Dondero that he 13 should cause SOHC to live up to the contractual 14 obligations you came to believe that they had owed 15 UBS? 16 A That would be a business decision and 17 Mr. Dondero could make it if he wanted to. 18 Q Did you believe it was your responsibility 19 to ever advise Mr. Dondero that he should live up 20 to the contractual obligations you believed that 21 SOHC owed to UBS? 22 MS. SMITH: Objection to form. 23 A Again, my only advice, sir, was that I 24 believed liability was more likely than not to be 25 found. I didn't talk about obligations and</p>
<p>110 1 BY MR. CLUBOK: 2 Q Well, do you believe that it was 3 appropriate for you to advise those responsible 4 for SOHC and CDO Fund that they had contractual 5 obligations that they were in breach of? 6 A Did I believe I was obligated to inform -- 7 I mean, we had -- I had discussed, as I said, 8 liability and probability of liability on those 9 specific claims of those specific defendants with 10 both Mr. Ellington and Mr. Dondero at various 11 points in time. 12 Q Did you ever, in words or substance, 13 advise those responsible for managing SOHC and CDO 14 Fund's affairs that they should abide by the 15 contractual obligations you came to believe they 16 owed? 17 MS. SMITH: Objection to form. 18 A I'm going to disagree with the premise of 19 your question, sir. 20 BY MR. CLUBOK: 21 Q What's the premise you disagree with? 22 A I don't know that there necessarily was 23 anyone generally responsible for the -- those two 24 entities, save potentially Mr. Dondero at the top 25 of the organization.</p>	<p>112 1 expectations and that he needed to do anything. 2 My legal advice was solely with respect to the 3 probability of outcome on those two claims. 4 BY MR. CLUBOK: 5 Q Is that a no to my question? 6 A Your question assumes statements I did not 7 make. 8 Q No, it doesn't assume anything. I'm going 9 to ask it again and I'm going to ask you to listen 10 carefully to my question. 11 A Okay. 12 Q Did you believe it was your responsibility 13 to ever advise Mr. Dondero that he should live up 14 to the contractual obligations that SOHC owed to 15 UBS? 16 A I disagree with the premise of the 17 question. 18 Q What premise do you disagree with? 19 A That there are contractual obligations 20 that SOHC and CDO Fund necessarily owed to UBS. 21 Q You believed it was more likely than not 22 that a court would determine that they had 23 contractual obligations that they owed to UBS that 24 they were in breach of, correct? 25 A Yes.</p>

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<p>113</p> <p>1 Q Okay. Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC to live up to those contractual 4 obligations?</p> <p>5 A Again, my responsibility was to do the 6 legal analysis, not to tell people how to run 7 their business.</p> <p>8 Q So that's a no to my question?</p> <p>9 A Well, no, I disagreed with the underlying 10 premise of your question and that was my response, 11 sir.</p> <p>12 Q My question is, did you ever believe it 13 was your responsibility to advise Mr. Dondero that 14 he should cause SOHC to live up to the contractual 15 obligations you came to believe a court would 16 determine that SOHC and CDO Fund owed to UBS that 17 they were in breach of?</p> <p>18 A Right. And my testimony was that I 19 disagreed with the premise of that question.</p> <p>20 Q No, I changed the question. Okay. So now 21 I changed the question to address your premise 22 issue and you agreed with all these premises. 23 I've got it in writing here, so I'm going to ask 24 the question one more time and ask you to listen 25 to this question.</p>	<p>115</p> <p>1 Q Your testimony here under oath is that you 2 don't remember anything at all about a role you 3 played in connection with any settlement analysis 4 of the UBS litigation in New York against Highland 5 and its affiliates?</p> <p>6 A That was not my testimony.</p> <p>7 Q Okay. What do you remember, with as much 8 specificity as possible, about the role you played 9 in connection with any settlement analysis of the 10 New York UBS litigation against Highland and its 11 affiliates?</p> <p>12 A I know that Highland considered settlement 13 at numerous time periods and it would have been my 14 role to kind of gather the underlying documents 15 and facts to support settlement proposals.</p> <p>16 Q Okay. Any other role that you ever 17 remember playing in connection with any settlement 18 analysis of the New York UBS litigation against 19 Highland and its affiliates other than gathering 20 documents and facts to support settlement 21 proposals?</p> <p>22 A I don't recall.</p> <p>23 Q Did you continue to play any role in 24 connection with the settlement analysis after the 25 bankruptcy?</p>
<p>114</p> <p>1 Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC and CDO Fund to live up to the 4 contractual obligations you had come to believe a 5 court would determine they owed to UBS?</p> <p>6 A Well, it was first that a court was more 7 likely than not to determine. No, I don't believe 8 it was my obligation to tell him to fulfill 9 contractual obligations or cause those entities to 10 fulfill contractual obligations.</p> <p>11 Q Was there anyone at Highland that you're 12 aware of who you understood to have that role to 13 advise Mr. Dondero to fulfill contractual 14 obligations?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 A Since it's -- no, I don't know that I 17 would have had a thought process about that one 18 way or another.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So let's talk about the role you did play 21 in connection with settlement analysis for the UBS 22 New York litigation. Can you describe, in as much 23 detail as possible, what your role was, if any?</p> <p>24 A I don't specifically remember what role I 25 played in settlement analysis.</p>	<p>116</p> <p>1 A I believe -- as -- let me see how I can 2 say this properly. I believe the answer is no. I 3 may have had some ancillary or occasional touch on 4 that process, but largely the answer is no.</p> <p>5 Q You were aware that there were settlement 6 discussions, including court-ordered mediation, in 7 connection with UBS's claims in the bankruptcy, 8 correct?</p> <p>9 A Yes.</p> <p>10 Q And you're aware that those settlement 11 discussions at times also included potential 12 settlement of the remaining claims in the New York 13 litigation against the entities that are outside 14 the bankruptcy, like CDO Fund and SOHC?</p> <p>15 A Actually, no, that was -- I don't recall 16 that ever being disclosed to me.</p> <p>17 Q Do you recall there ever being any 18 discussion, in words or substance, that there was 19 potential settlement regarding UBS in its claims 20 against Multi Strat?</p> <p>21 A And when we say settlement, we're talking 22 about like a cash payment for Multi Strat to UBS 23 in exchange for a release? Or are we talking 24 about like the May 2020 settlement, partial 25 settlement, whatever you want to call that thing?</p>

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<p>117</p> <p>1 Q Right. We're talking about -- there was a 2 May 2020 agreement regarding the sale of certain 3 assets and how the proceeds would be preserved. I 4 want to take that out of the equation. 5 A Okay. 6 Q So we're talking about payments or 7 consideration by Multi Strat to UBS with respect 8 to the claims that were pending in the New York 9 litigation. 10 MS. SMITH: Objection to form. 11 A No, I -- so I had had an accident in early 12 January of 2020. By the time I got back from 13 leave of absence in April or May, largely I had 14 just kind of become a task attorney at that point 15 and Pachulski was running things. 16 BY MR. CLUBOK: 17 Q Were you ever tasked by Pachulski after 18 April -- after -- strike that. 19 When did you come back after your 20 accident, roughly? 21 A It was a slow return. I came back 22 part-time in April, and I think I was fully back 23 in May. 24 Q Okay. After returning to your active 25 employment following your accident in April or May</p>	<p>119</p> <p>1 but it was a large number. 2 Q And so you reviewed and gave comments 3 throughout the process of objecting to the UBS 4 claims? 5 A Yes. 6 Q And were there any other tasks that you 7 were given ever in connection with the UBS claim 8 by Mr. Seery or by the Pachulski firm? 9 A Not really, no. 10 Q Not really, or no? 11 A Sit -- I'm -- I would say -- yeah, I would 12 say no. I worked on the claim objection as my 13 role with respect to UBS. 14 Q How about on the summary judgment? 15 A I call that part of the claim objection 16 because it's part of the same process. 17 Q Okay. 18 A So also there was a lift stay motion. I 19 was involved in that. So really it -- let me 20 rephrase it. I was involved in what I'm going to 21 call the litigating part. So the adversarial 22 pleadings between the debtor and UBS with respect 23 to how the Court should rule on the claim. 24 Q And you were responsible for all of that 25 up until the time the parties reached a</p>
<p>118</p> <p>1 of 2020, were you ever tasked with any work in 2 connection with the UBS claim? 3 A Yes. 4 Q What were you tasked with? 5 A I was tasked with assisting Pachulski in 6 analysis and drafting of the claim objection. 7 Q Who tasked you with that? 8 A Mr. Seery. 9 Q Directly? 10 A Yes. 11 Q He told you that he needed assistance in 12 analyzing UBS's claim and helping draft the claim 13 objection, correct? 14 A He told me to assist Pachulski in that 15 process. 16 Q I see. And who specifically at Pachulski 17 did you assist in that process? 18 A It was a team of lawyers, but primarily 19 led by Mr. Feinstein. 20 Q Anyone else? 21 A His entire team. Elissa Wagner, I believe 22 was an associate, John Morris had some involvement 23 at various points in time, Greg Demo had 24 involvement at certain points in time. I don't 25 remember who the other lawyers were at Pachulski,</p>	<p>120</p> <p>1 settlement? 2 MS. SMITH: Objection to form. 3 A I didn't say I was responsible, no. 4 BY MR. CLUBOK: 5 Q I'm sorry. You had tasks assigned to you 6 in connection with the litigation between UBS and 7 the debtor up until the time that those entities 8 reached a settlement agreement? 9 A No, that's not accurate. 10 Q Okay. When did you -- when was the last 11 time you were assigned a task in connection with 12 the UBS litigation against the debtor? 13 A Probably would have been responding to 14 certain discovery that UBS propounded in advance 15 of summary judgment. 16 Q That was the last time you were given any 17 kind of task, that you can recall? 18 A The last time I can recall, yes. Largely, 19 Pachulski took it over and if they asked me to do 20 something, I would, but I was mostly kept out of 21 that process. 22 Q And who asked you to help respond to 23 discovery requests that UBS had propounded in 24 advance of summary judgment? 25 A I believe it was Greg Demo.</p>

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<p>121</p> <p>1 Q And did you provide complete assistance to</p> <p>2 Mr. Demo in responding to the UBS discovery</p> <p>3 request to the best of your ability?</p> <p>4 A I provided assistance to Mr. Demo in</p> <p>5 response to the tasks that he had given me, yes.</p> <p>6 Q Did you believe that you were providing</p> <p>7 complete assistance to Mr. Demo in responding to</p> <p>8 the UBS discovery requests to the best of your</p> <p>9 ability?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A So I disagree with the premise of your</p> <p>12 question because I was given specific tasks and I</p> <p>13 did those specific tasks.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Do you believe that in connection with the</p> <p>16 tasks that Mr. Demo assigned you, you performed</p> <p>17 those tasks to the very best of your ability?</p> <p>18 A Yes.</p> <p>19 Q And do you believe that you were totally</p> <p>20 candid with Mr. Demo in the course of performing</p> <p>21 those tasks that you were assigned with respect to</p> <p>22 the discovery requests for UBS?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A With respect to those tasks, yes.</p> <p>25</p>	<p>123</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q You never affirmatively made misstatements</p> <p>3 to him as far as you can recall, correct?</p> <p>4 A As far as I can recall, I never made a</p> <p>5 misstatement to Mr. Demo.</p> <p>6 Q And same thing with respect to all of the</p> <p>7 lawyers at the Pachulski firm?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A To the best of my recollection, I never</p> <p>10 made an affirmative misstatement to any of them.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Did you ever make an affirmative</p> <p>13 misstatement to any of the independent directors?</p> <p>14 A None that I can recall.</p> <p>15 Q But you certainly -- there's certainly</p> <p>16 information that you did not volunteer in</p> <p>17 connection with your work with them; is that fair?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 A I don't believe that's how I would</p> <p>20 characterize it, sir, no.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Well, there's information that you had</p> <p>23 that may have been relevant to the tasks you were</p> <p>24 performing that you chose not to volunteer. Fair?</p> <p>25 MS. SMITH: Objection to form.</p>
<p>122</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Were there any tasks that you were not</p> <p>3 completely candid with Mr. Demo about?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 A No. I'm being very specific. With</p> <p>6 respect to the tasks that I had with respect to</p> <p>7 the discovery in UBS, I believe I was candid with</p> <p>8 Mr. Demo.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Was there ever a time you were less than</p> <p>11 candid with Mr. Demo?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A In response to a question that he had or</p> <p>14 just generally volunteering lots of information to</p> <p>15 him?</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Well, let's start with --</p> <p>18 A I don't -- I'm sorry, I don't understand</p> <p>19 the question, sir.</p> <p>20 Q You don't understand the question as to</p> <p>21 whether or not you were ever less than candid with</p> <p>22 Mr. Demo?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A Did I ever not tell him the truth? No, I</p> <p>25 didn't ever not tell him the truth.</p>	<p>124</p> <p>1 A Relevant to the tasks I was performing?</p> <p>2 No, I don't know that that's necessarily true.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Relevant to the UBS litigation with</p> <p>5 Highland. Strike that.</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Let me ask this question again. There was</p> <p>9 certainly information that you had that was</p> <p>10 relevant to the UBS litigation with the debtor</p> <p>11 that you chose not to volunteer, correct?</p> <p>12 A No.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A Actually, I don't think that's right at</p> <p>15 all. No, I don't believe that's correct.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q You were specifically asked to identify</p> <p>18 information about the assets of CDO Fund and SOHC,</p> <p>19 correct?</p> <p>20 A That wasn't the exact task, no.</p> <p>21 Q At some point you were made aware that UBS</p> <p>22 was seeking information about the assets of</p> <p>23 CDO Fund and SOHC, correct?</p> <p>24 A Yes.</p> <p>25 Q And you were aware that UBS was seeking</p>

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<p>125</p> <p>1 information not just about the current -- or the</p> <p>2 then current assets of those entities, but the</p> <p>3 historical information about those entities going</p> <p>4 back to the beginning of 2009?</p> <p>5 A I was aware that UBS sought that</p> <p>6 information, yes.</p> <p>7 Q And you were aware that the Pachulski firm</p> <p>8 believed they had an obligation -- or strike that.</p> <p>9 Did the debtor or its lawyers ever make it</p> <p>10 clear to you that they intended to provide that</p> <p>11 information to the very best of their ability?</p> <p>12 A So we had fairly detailed conversations</p> <p>13 about what we were going to do in response to that</p> <p>14 discovery. I don't know that there was ever a</p> <p>15 discussion of -- well, I remember we had fairly --</p> <p>16 we had pretty detailed conversations about how to</p> <p>17 try to figure out how to respond to that</p> <p>18 discovery.</p> <p>19 Q Who's the we in that sentence?</p> <p>20 A It was me and Mr. Demo.</p> <p>21 Q That's it?</p> <p>22 A John Morris may have been involved, but I</p> <p>23 believe it was primarily Mr. Demo.</p> <p>24 Q Anybody else?</p> <p>25 A No one else that I can recall sitting here</p>	<p>127</p> <p>1 tasks?</p> <p>2 A I don't believe -- in terms of what he --</p> <p>3 of what we were supposed to be gathering for them,</p> <p>4 no, I don't believe he did.</p> <p>5 Q Okay. So did you convey to Mr. Ellington,</p> <p>6 in words or substance, that one of the important</p> <p>7 things that UBS -- well, strike that.</p> <p>8 Did Mr. Demo make it clear to you that one</p> <p>9 of the very important things that -- strike that.</p> <p>10 Did Mr. Demo make it clear to you that UBS</p> <p>11 had conveyed that it put a high level of</p> <p>12 importance behind the request for identifying the</p> <p>13 assets of SOHC and CDO Fund?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A That wasn't exactly the task I was given.</p> <p>16 I'm struggling to recall exactly what we said UBS</p> <p>17 wanted, but that ultimately was not -- the task I</p> <p>18 was given was something more specific.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q What was that?</p> <p>21 A To link up the assets that were in the</p> <p>22 funds in May of 2009 and answer the question what</p> <p>23 happened to those assets and where are they today.</p> <p>24 Q And you believed that the only task you</p> <p>25 had in connection with identification of assets</p>
<p>126</p> <p>1 today.</p> <p>2 Q And did you convey this discussion to</p> <p>3 anyone, like, for example, someone in the team, to</p> <p>4 assist you with this work or to Mr. Ellington, to</p> <p>5 apprise him of it or Mr. Dondero? Did you ever</p> <p>6 after having that discussion with Mr. Demo or</p> <p>7 those extensive discussions, ever convey, in words</p> <p>8 or substance, those discussions to anybody?</p> <p>9 A I conveyed to Mr. Ellington the tasks that</p> <p>10 I had been assigned and what I was doing to</p> <p>11 fulfill those tasks.</p> <p>12 Q Anyone else?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A Stephanie Vitiello assisted in gathering</p> <p>15 some of the documents, although I don't remember</p> <p>16 if it was in response to UBS or not. There were a</p> <p>17 lot of document requests at the time.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Is there anyone else that you can recall</p> <p>20 conveying the substance of the extensive</p> <p>21 conversations you had with Mr. Demo about</p> <p>22 responding to the UBS requests?</p> <p>23 A No.</p> <p>24 Q And did Mr. Ellington give you any</p> <p>25 instructions in any way about how to perform those</p>	<p>128</p> <p>1 was to answer that very specific question?</p> <p>2 A It was -- in terms of past assets? That's</p> <p>3 probably right. That was the defined task.</p> <p>4 Q Okay. And in terms of current assets,</p> <p>5 were you also asked, in words or substance, to</p> <p>6 help identify the full breadth of the current</p> <p>7 assets held by CDO Fund and SOHC?</p> <p>8 A I don't remember if I was or not. I would</p> <p>9 have to look at the -- I don't remember.</p> <p>10 Q You understood that UBS was trying to</p> <p>11 obtain information about the current assets of</p> <p>12 CDO Fund and SOHC, correct?</p> <p>13 A Yes.</p> <p>14 Q And also HFP?</p> <p>15 A Yes.</p> <p>16 Q Okay. And did you provide all material</p> <p>17 information relating to the assets held by</p> <p>18 CDO Fund, SOHC and HFP from March of 2009 through</p> <p>19 the present?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 A I don't know. We provided a lot of</p> <p>22 documents, so the documents will speak for</p> <p>23 themselves.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did you endeavor to provide all material</p>

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<p>129</p> <p>1 information that you were aware of relating to the</p> <p>2 assets held by CDO Fund, SOHC and HFP from March</p> <p>3 of 2009 through the present in response to the</p> <p>4 detailed discussions you had with Mr. Demo?</p> <p>5 A No. There were certain documents that</p> <p>6 were separately held, like e-mails, and so we</p> <p>7 didn't touch the e-mails.</p> <p>8 Q What do you mean?</p> <p>9 A So there was a motion to compel by the UCC</p> <p>10 in July of 2020. And so all of the e-mail</p> <p>11 communications were at that point separated out</p> <p>12 and sent to Meta-e for contract review. And so</p> <p>13 that e-mail process was part of a very long</p> <p>14 conversation -- a long series of conversations and</p> <p>15 process with Sidley. And so once those e-mails</p> <p>16 went over to Meta-e, I didn't really address them.</p> <p>17 They were a separate data set that were being</p> <p>18 handled separately.</p> <p>19 Q Did you make it clear to Mr. Demo that you</p> <p>20 were -- that you did not consider any review of</p> <p>21 those e-mails to be part of your --</p> <p>22 A Absolutely.</p> <p>23 Q Okay. And did Mr. Demo say that other</p> <p>24 people would deal with that, those e-mails and the</p> <p>25 information, if any, that was relevant to the</p>	<p>131</p> <p>1 looking for documents for HFP.</p> <p>2 Q Why did you do that?</p> <p>3 A Because the process of figuring out what</p> <p>4 had happened to the CDO Fund and SOHC assets had</p> <p>5 been a lengthy task, and I told Mr. Demo that</p> <p>6 unless I got positive instructions from them to</p> <p>7 the contrary, that I didn't want to have to repeat</p> <p>8 that task for HFP and he agreed with that.</p> <p>9 Q Is that because you-all agreed that -- is</p> <p>10 that because you said -- sorry. You guys decided</p> <p>11 you just didn't want to do it or you thought it</p> <p>12 was unnecessary because you had already gathered</p> <p>13 information in the course of looking for SOHC's</p> <p>14 assets?</p> <p>15 A I don't remember what -- I don't remember</p> <p>16 if the basis was that we'll just stand on our</p> <p>17 objections or if it's not necessary for UBS's</p> <p>18 motion for summary judgment. Because the</p> <p>19 fundamental point was UBS was asking for --</p> <p>20 Pachulski and I agreed that UBS was asking for</p> <p>21 documents it didn't need, but the reason it was</p> <p>22 asking for documents it didn't need was for the</p> <p>23 purposes of preventing the Court from going</p> <p>24 forward with the summary judgment on the claims</p> <p>25 against the debtor. And so there was a discussion</p>
<p>130</p> <p>1 asset information that UBS was seeking?</p> <p>2 A I don't recall if he did or not. I</p> <p>3 remember John Morris was the person at Pachulski</p> <p>4 responsible for that part of the process and what</p> <p>5 conversations happened between Mr. Demo and</p> <p>6 Mr. Morris, I don't know.</p> <p>7 Q Well, did anyone convey to you, in words</p> <p>8 or substance, that other people would be handling,</p> <p>9 reviewing those e-mails that were being housed by</p> <p>10 Meta-e for responsiveness to the information about</p> <p>11 the assets of SOHC, CDO Fund and HFP that UBS was</p> <p>12 requesting?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A The conversation simply was, all right,</p> <p>15 the e-mails are separate, Isaac, you don't need to</p> <p>16 look at those or worry about those, they're being</p> <p>17 handled separately.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q But other than those e-mails, you were</p> <p>20 responsible for getting any other material</p> <p>21 information you had about the assets of CDO Fund,</p> <p>22 SOHC and HFP dating back to March 2009?</p> <p>23 A So there's one exception to that.</p> <p>24 Q Yes.</p> <p>25 A I told Mr. Demo that I was not going to be</p>	<p>132</p> <p>1 of what are the documents we need to give them,</p> <p>2 how hard is it to get, and then what are we --</p> <p>3 between, you know, kind of the balance of the</p> <p>4 burden and the requests and, you know, how much</p> <p>5 you want to show the Court that you've produced</p> <p>6 these documents, even though they're completely</p> <p>7 irrelevant to the claims at bar. I mean, that's a</p> <p>8 balancing test that counsel goes through all the</p> <p>9 time.</p> <p>10 Q You told Mr. Demo that the total value of</p> <p>11 assets at SOHC and HFP from the time period of</p> <p>12 March 2009 through the present was totally</p> <p>13 irrelevant to our claims against the debtor?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A I don't know that that was the</p> <p>16 conversation. The conclusion was that we weren't</p> <p>17 going to look for the HFP documents.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Okay. You introduced this concept of</p> <p>20 total irrelevancy. Did you, in words or</p> <p>21 substance, discuss with Mr. Demo that asset</p> <p>22 information about CDO Fund, SOHC and HFP was</p> <p>23 totally irrelevant against the claims of the</p> <p>24 debtor?</p> <p>25 MS. SMITH: Objection to form.</p>

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<p>133</p> <p>1 A I believe the conversation was UBS -- UBS 2 has had ten years to seek whatever discovery it 3 wants and it didn't need these documents until a 4 month before summary judgment. And so the 5 discussion was that that request for documents 6 immediately before summary judgment was an attempt 7 to delay summary judgment. 8 BY MR. CLUBOK: 9 Q Yeah, the question -- I asked the question 10 about relevancy. Regardless of whether -- 11 whatever your views are, these arguments you want 12 to make about -- 13 A To be clear, these aren't my arguments, 14 sir. This is Pachulski's position they were 15 conveying to me. 16 Q I see. So Pachulski conveyed -- did they 17 convey to you, then, that it was unnecessary to 18 obtain all of the asset information from HFP from 19 March 2009 to the present, in words or substance? 20 A There was a conclusion that we weren't 21 going to. I don't remember if there was a 22 discussion, the use of the word necessary or not, 23 but ultimately we didn't decide to. 24 Q So Pachulski -- Mr. Demo specifically 25 conveyed to you that they had concluded it was</p>	<p>135</p> <p>1 A Ultimately that was not the task that he 2 concluded I should undertake. 3 Q That's not my -- we'll get to the task 4 that he gave you. But did he convey, in words or 5 substance, that the debtor was going to use its 6 best efforts to identify the assets of SOHC and 7 CDO Fund from March 2009 to the present for 8 purposes of providing that information to UBS? 9 MS. SMITH: Objection to form. 10 A At some point in the process, that may 11 have been his statement, but that wasn't the 12 conclusion after we had gone through numerous 13 discussions. 14 BY MR. CLUBOK: 15 Q What was the conclusion? 16 A The conclusion was that my task was to 17 locate the assets that were in the production to 18 UBS as of May 2009 and identify what had happened 19 to those assets. 20 Q And did you have -- setting aside the 21 e-mails that you were specifically told others 22 would be reviewing, did you have any other 23 information about assets of SOHC or CDO Fund from 24 March 2009 to the present that you did not share 25 with Mr. Demo?</p>
<p>134</p> <p>1 unnecessary to try to trace the assets of HFP from 2 March 2009 to the present? 3 A Again, you're introducing the word 4 necessary, which I'm not prepared to adopt. I can 5 just say the conclusion from Mr. Demo was that we 6 weren't going to do that at that time. 7 Q Okay. Mr. Demo conveyed to you that the 8 debtor had concluded it was not going to try to 9 identify the assets of HFP from March 2009 to the 10 present to provide to UBS, correct? 11 A Can you repeat that question? It had a 12 lot in it. 13 Q Did Mr. Demo convey to you that the debtor 14 had concluded it was not going to try to identify 15 the assets of HFP from March 2009 to the present 16 in order to provide that information to UBS? 17 A I think that's probably a fair 18 characterization. 19 Q Okay. Well, we may come back to HFP. But 20 with respect to SOHC and CDO Fund, did Mr. Demo 21 convey, in words or substance, that it was 22 necessary to as best as possible identify the 23 assets of SOHC and CDO Fund from March 2009 to the 24 present for purposes of providing that information 25 to UBS?</p>	<p>136</p> <p>1 A From March 2009 through the present, yes, 2 I did have some other information I did not share 3 with him. 4 Q And that was material information about 5 the value of assets of those two funds between 6 March 2009 through the present, correct? 7 MS. SMITH: Objection to form. 8 A Material information about the value of 9 assets? I don't really think that's right, no. 10 BY MR. CLUBOK: 11 Q Well, you said you had other -- well, 12 material should be assumed. If you had 13 information that an asset was named Highland CDO 14 Opportunity Fund, LLP versus LP, I'm not talking 15 about that. I'm talking about material 16 information. So let me ask the question again. 17 I said -- you said from March 2009 to the 18 present, you had some other information about the 19 assets of SOHC or CDO Fund that you did not share 20 with Mr. Demo, correct? 21 A Yes. 22 Q And when you say some information, do you 23 mean material information about those assets? 24 A Material information over that entire time 25 period, probably, yes.</p>

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<p>1 Q But was --</p> <p>2 A Hold on. Apologies, sir, let me finish</p> <p>3 the answer. Material information about that</p> <p>4 entire time period, yes. Material information</p> <p>5 about the task I was assigned, no.</p> <p>6 Q Understood. And what was the material</p> <p>7 information you had about the assets of SOHC and</p> <p>8 CDO Fund from the period March 2009 through the</p> <p>9 present that you chose not to share with</p> <p>10 Pachulski?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 A So I'm going to put the word material to</p> <p>13 the side, sir. So if you want to just re-ask the</p> <p>14 question, because that's a judgment call and I'll</p> <p>15 let the Court make that decision.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q You're a lawyer.</p> <p>18 A I am.</p> <p>19 Q So I'm using -- with your lawyer hat on,</p> <p>20 did you believe you had any material information</p> <p>21 about the assets of SOHC and CDO Fund from the</p> <p>22 period March 2009 through the present that you</p> <p>23 chose not to share with Pachulski?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 A I'm not going to perform -- sir, I'm not</p>	<p>137</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you make a conscious decision not to</p> <p>3 share that information with the Pachulski firm?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 A I made a conscious decision that it wasn't</p> <p>6 relevant to the task I was undertaking.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did you ever share that information with</p> <p>9 Mr. Seery?</p> <p>10 A No, but we rarely spoke.</p> <p>11 Q Did you share that information or cause it</p> <p>12 to be shared with any of the directors?</p> <p>13 A I almost never spoke to the other two</p> <p>14 directors, or even directly ever communicated with</p> <p>15 them hardly ever.</p> <p>16 Q Did you communicate through any means,</p> <p>17 e-mail, smoke signals, text messages, whatever,</p> <p>18 the information about the 2017 transaction</p> <p>19 involving CDO Fund and SOHC assets to any</p> <p>20 independent director or lawyer of the debtor?</p> <p>21 A No. It wasn't relevant to the task I was</p> <p>22 working on.</p> <p>23 Q Did you discuss that transaction with</p> <p>24 anybody else at any point during the pendency of</p> <p>25 the bankruptcy?</p>
<p>138</p> <p>1 prepared to perform legal analysis on the fly, but</p> <p>2 if you'd like to ask me for objective facts, I'm</p> <p>3 happy to provide those to you.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q We'll come back to that. But what was the</p> <p>6 information you had about the assets of SOHC and</p> <p>7 CDO Fund from March 2009 to the present that you</p> <p>8 chose not to provide to the Pachulski firm?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 A I knew that there had been a transaction</p> <p>11 in 2017 sometime with respect to an</p> <p>12 after-the-event insurance policy with Sentinel.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Anything else?</p> <p>15 A Is there anything else? There may have</p> <p>16 been other things, but I just didn't look into</p> <p>17 them really.</p> <p>18 Q And you made a conscious decision not to</p> <p>19 share anything about the transaction in 2017</p> <p>20 involving Sentinel insurance with the Pachulski</p> <p>21 firm, correct?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A It wasn't relevant to the task I was</p> <p>24 undertaking.</p> <p>25</p>	<p>139</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 A Yes.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Who did you discuss it with?</p> <p>5 A Beecher Carlson.</p> <p>6 Q Who is Beecher Carlson?</p> <p>7 A They're the underwriter for Sentinel on</p> <p>8 the insurance policy.</p> <p>9 Q And there's an insurance policy?</p> <p>10 A Yes.</p> <p>11 Q And who is that insurance -- who is the</p> <p>12 insured on that insurance policy?</p> <p>13 A Certain of the defendants in the UBS case.</p> <p>14 Q Including CDO Fund and SOHC?</p> <p>15 A I believe that's probably right, but I'd</p> <p>16 have to have my recollection refreshed.</p> <p>17 Q And you understood that insurance policy</p> <p>18 is an asset of the CDO Fund and SOHC, correct?</p> <p>19 A No.</p> <p>20 Q What do you think it is?</p> <p>21 A I don't know how to -- it's however</p> <p>22 accountants would classify it, but, no, I don't</p> <p>23 believe it's an asset. The accountants didn't</p> <p>24 classify it as an asset was my understanding. I</p> <p>25 don't think insurance policies show up on balance</p>

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<p>141</p> <p>1 sheets.</p> <p>2 Q There were assets exchanged for that</p> <p>3 insurance policy in 2017, correct?</p> <p>4 A That's my understanding, yes.</p> <p>5 Q What was the rough value of those assets</p> <p>6 that were exchanged?</p> <p>7 A I don't know.</p> <p>8 Q You have no idea?</p> <p>9 A No.</p> <p>10 Q Did you ever know?</p> <p>11 A No, I don't believe I did.</p> <p>12 Q You never had any idea about the rough</p> <p>13 total value of the assets exchanged in 2017 for</p> <p>14 the insurance policy that you've called the ATE</p> <p>15 policy from Sentinel?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 A No, I wasn't really involved in that.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q You weren't involved in what?</p> <p>20 A The drafting of the policy or the process</p> <p>21 of getting it implemented.</p> <p>22 Q You weren't involved at all in the</p> <p>23 drafting of the policy?</p> <p>24 A No.</p> <p>25 Q You weren't involved at all in the process</p>	<p>143</p> <p>1 judgment came down, you shared that with Beecher</p> <p>2 Carlson?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 A I shared it with them. I don't remember</p> <p>5 if it was immediately because you have to remember</p> <p>6 at this time I was in recovery at home. So I</p> <p>7 think I provided it to them kind of as quickly as</p> <p>8 possible, given my limitations at the time.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Why did you provide it to Beecher Carlson</p> <p>11 as quickly as possible?</p> <p>12 A Because it's a -- the judgment against the</p> <p>13 insureds would be a fact that you should inform</p> <p>14 the underwriter.</p> <p>15 Q When you say Beecher Carlson is the</p> <p>16 underwriter, what do you mean? They underwrote</p> <p>17 the policy?</p> <p>18 A No, sorry, that's the wrong term. Oh,</p> <p>19 man. I forget their exact role. They're -- maybe</p> <p>20 they're more like an auditor.</p> <p>21 Q For Sentinel?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A Well, that's the thing. For the policy.</p> <p>24 My understanding is that you had to have kind of</p> <p>25 an external third party looking at the policy, but</p>
<p>142</p> <p>1 of getting the insurance policy implemented; is</p> <p>2 that correct?</p> <p>3 A I had one role and it was a limited one.</p> <p>4 Q What was that?</p> <p>5 A It was to share information with Beecher</p> <p>6 Carlson as the underwriter about the underlying</p> <p>7 litigation.</p> <p>8 Q And that was the only role you ever had</p> <p>9 that in any way was connected to the insurance</p> <p>10 policy issued by Sentinel?</p> <p>11 A That's the only one I can ever recall,</p> <p>12 yes.</p> <p>13 Q And what information did you share with</p> <p>14 Beecher Carlson as the underwriter, about the</p> <p>15 underlying litigation?</p> <p>16 A Pleadings --</p> <p>17 Q Anything else?</p> <p>18 A -- for the most part. The appellate</p> <p>19 rulings of the New York appellate division.</p> <p>20 Q Anything else?</p> <p>21 A When the February 2020 judgment came down,</p> <p>22 I believe I shared that with them.</p> <p>23 Q So as soon as the judgment came down</p> <p>24 regarding -- strike that.</p> <p>25 As soon as the roughly billion dollar</p>	<p>144</p> <p>1 I don't remember exactly. There's the right word</p> <p>2 for what their role was and I apologize. It's</p> <p>3 just slipping my mind right now.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Okay. And other than providing</p> <p>6 information -- and by the way, is the first time</p> <p>7 you provided information to Beecher Carlson after</p> <p>8 the policy was put into place?</p> <p>9 A No.</p> <p>10 Q So you started providing information to</p> <p>11 Beecher Carlson prior to the execution of the</p> <p>12 policy?</p> <p>13 A My recollection is that I had one</p> <p>14 conversation with Beecher Carlson in advance of</p> <p>15 the execution of the policy.</p> <p>16 Q Who at Beecher Carlson?</p> <p>17 A I don't know.</p> <p>18 Q And what was the substance of that one</p> <p>19 conversation?</p> <p>20 A To essentially give the entire background</p> <p>21 of the litigation.</p> <p>22 Q At that point did you give your opinion</p> <p>23 that liability was likely to be established</p> <p>24 against CDO Fund and SOHC, in words or substance?</p> <p>25 A I-- it was one conversation about</p>

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<p>145</p> <p>1 45 minutes four years ago. I really don't</p> <p>2 remember what we said.</p> <p>3 Q Do you recall ever providing, in advance</p> <p>4 of the policy, your opinion that liability was</p> <p>5 likely to be established?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 A I don't recall.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Do you recall ever telling Beecher Carlson</p> <p>10 before or after the policy but prior to the</p> <p>11 judgment, that you had formed an opinion that</p> <p>12 liability was likely to be established against</p> <p>13 CDO Fund and SOHC with respect to the breach of</p> <p>14 contract claims?</p> <p>15 A I don't recall. Largely it was providing</p> <p>16 Beecher Carlson with information and letting them</p> <p>17 make their determination.</p> <p>18 Q Did you ever provide them with that</p> <p>19 information, the view you had with respect to</p> <p>20 liability?</p> <p>21 A I don't recall if I did. Mostly I</p> <p>22 provided them objective data, like pleadings,</p> <p>23 orders of the Court, those sorts of materials.</p> <p>24 Q Are you saying you have no idea if you</p> <p>25 provided this information or are you saying you</p>	<p>147</p> <p>1 Q You called it an after-the-event policy.</p> <p>2 Was it also sometimes shorthand by ATE policy?</p> <p>3 A Yes, that's what after the event stands</p> <p>4 for. It's a fairly standard industry product</p> <p>5 that's very common, particularly in the UK and</p> <p>6 other common law jurisdictions. So it's a fairly</p> <p>7 matured industry.</p> <p>8 Q Okay. And did you have any role -- or</p> <p>9 sorry, who made the decision to obtain an ATE</p> <p>10 policy with respect to the UBS litigation in</p> <p>11 New York?</p> <p>12 A My understanding is that Mr. Dondero made</p> <p>13 that decision.</p> <p>14 Q What's that understanding based on?</p> <p>15 A I believe that was communicated to me by</p> <p>16 Mr. Ellington.</p> <p>17 Q When?</p> <p>18 A Back around the time, probably right after</p> <p>19 the policy was implemented.</p> <p>20 Q Okay. So after it was implemented was the</p> <p>21 first time you heard that Mr. Dondero had made the</p> <p>22 decision to implement the ATE policy?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 MR. CLUBOK: Sorry, what's the form</p> <p>25 objection?</p>
<p>146</p> <p>1 don't recall doing it and therefore you probably</p> <p>2 didn't do it?</p> <p>3 A Well, I'm saying neither. What I'm saying</p> <p>4 is I don't remember one way or another.</p> <p>5 Q Okay. And other than providing</p> <p>6 information to Beecher Carlson, did you have any</p> <p>7 other role in any way with the insurance policy</p> <p>8 issued by Sentinel with respect to the UBS</p> <p>9 litigation?</p> <p>10 A No, not that I recall.</p> <p>11 Q Did you have any role at all in the</p> <p>12 process by which it was decided to pursue</p> <p>13 obtaining this policy?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A I don't believe that I was involved in</p> <p>16 that process really.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Who made the decision -- by the way, you</p> <p>19 called it an after-the-event policy?</p> <p>20 A Yeah. Sorry. I need to sneeze, but I'll</p> <p>21 try to push through it.</p> <p>22 Q Okay. You let us know if you need a</p> <p>23 break. As I've said many times, please tell us if</p> <p>24 you need a break.</p> <p>25 A Just a sneeze on this one.</p>	<p>148</p> <p>1 MS. SMITH: I'm sorry, I just</p> <p>2 misunderstood the question.</p> <p>3 MR. CLUBOK: Okay. I'll rephrase it.</p> <p>4 Sorry.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Are you saying that after the ATE</p> <p>7 insurance policy went into effect was the first</p> <p>8 time that you heard that Mr. Dondero had made the</p> <p>9 decision to enter into that ATE policy?</p> <p>10 A I'm trying to recall, but I think that's</p> <p>11 right.</p> <p>12 Q And do you know -- did anyone ever ask</p> <p>13 your opinion as to whether or not it was a good</p> <p>14 idea to do this?</p> <p>15 A I certainly don't recall -- let me</p> <p>16 rephrase. I don't recall that ever happening. I</p> <p>17 don't believe it did happen.</p> <p>18 Q Were you ever in any way involved with</p> <p>19 weighing the pros and cons of entering into the</p> <p>20 ATE policy prior to it being entered into?</p> <p>21 A In or around -- you know, for the policy</p> <p>22 that got implemented, no.</p> <p>23 Q For any ATE policy?</p> <p>24 A I think there had been contemplation of an</p> <p>25 ATE policy earlier in that year as a settlement</p>

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<p>149</p> <p>1 mechanism, but that's the only other thing I can</p> <p>2 remember.</p> <p>3 Q Were you involved in that?</p> <p>4 A I believe it was part of a settlement</p> <p>5 analysis that I contributed to. Or that I was</p> <p>6 involved in.</p> <p>7 Q And so as part of that settlement</p> <p>8 analysis, you assessed the pros and cons of</p> <p>9 entering into an ATE policy?</p> <p>10 A I don't remember if I did or not. I</p> <p>11 remember that term showed up during that time in</p> <p>12 those considerations.</p> <p>13 Q But you're not linking that work you did</p> <p>14 to the actual entering into the ATE policy?</p> <p>15 A No, they're two completely separate</p> <p>16 processes.</p> <p>17 Q Why?</p> <p>18 A Well, one was essentially a mechanism for</p> <p>19 funding a settlement which, you know, basically</p> <p>20 in -- like essentially like you have a settlement</p> <p>21 agreement already done and signed and this is how</p> <p>22 you're going to fund it.</p> <p>23 Q Okay.</p> <p>24 A That's not what the August 2017</p> <p>25 transaction was.</p>	<p>151</p> <p>1 this policy to any of the independent directors?</p> <p>2 A I never discussed it with them one way or</p> <p>3 another.</p> <p>4 Q Did you ever disclose the existence of</p> <p>5 this policy to any lawyer representing the debtor?</p> <p>6 A I never discussed it with them one way or</p> <p>7 another.</p> <p>8 Q Did you discuss this policy with any other</p> <p>9 human being other than Beecher Carlson since the</p> <p>10 time that bankruptcy started?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 A Yes.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Who?</p> <p>15 A Matt DiOrio.</p> <p>16 Q When?</p> <p>17 A He was the one who usually would set up</p> <p>18 the calls with Beecher Carlson.</p> <p>19 Q And anyone else at all? Any other human</p> <p>20 being that you discussed this policy with since</p> <p>21 the bankruptcy?</p> <p>22 A I had discussed it at one point with</p> <p>23 Mr. Ellington.</p> <p>24 Q When?</p> <p>25 A July sometime maybe.</p>
<p>150</p> <p>1 Q What was the August 2017 transaction?</p> <p>2 A I'm not going to -- I don't know that I</p> <p>3 have a good characterization for it. I wasn't</p> <p>4 really involved in it, but it wasn't that.</p> <p>5 Q What was it, as far as you know?</p> <p>6 A It was a purchase of an after-the-event</p> <p>7 insurance policy.</p> <p>8 Q To do what?</p> <p>9 A I don't know what the purpose was. I</p> <p>10 wasn't really involved.</p> <p>11 Q You have no idea what the purpose of the</p> <p>12 after-the-event insurance policy was?</p> <p>13 A I don't know.</p> <p>14 Q Did you ever see it?</p> <p>15 A I remember seeing one page of it one time.</p> <p>16 Q When was that?</p> <p>17 A We were doing one of our annual update</p> <p>18 calls with Beecher Carlson and I think I asked</p> <p>19 on -- can we -- can someone confirm for me who the</p> <p>20 insureds are so I can make sure to link the</p> <p>21 developments for the defendants to the insureds</p> <p>22 that are named, and so I saw one page of the</p> <p>23 insurance policy at that point that listed who the</p> <p>24 insureds were.</p> <p>25 Q Did you ever disclose the existence of</p>	<p>152</p> <p>1 Q Of what year?</p> <p>2 A 2020. My apologies.</p> <p>3 Q Anyone else at all?</p> <p>4 A Not that I recall.</p> <p>5 Q Okay.</p> <p>6 MR. CLUBOK: Let's take a break.</p> <p>7 THE VIDEOGRAPHER: We are off the record</p> <p>8 at 1:04 p.m.</p> <p>9 (Recess taken from 1:04 p.m. CDT to</p> <p>10 2:12 p.m. CDT)</p> <p>11 THE VIDEOGRAPHER: The time is 2:12 p.m.</p> <p>12 We are back on the record.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Mr. Ellington [sic] --</p> <p>15 A No.</p> <p>16 Q Sorry. Mr. -- strike that.</p> <p>17 Mr. Leventon, you said you discussed the</p> <p>18 ATE policy with Mr. Ellington in approximately</p> <p>19 July 2020, correct?</p> <p>20 A I believe that was my testimony, yes.</p> <p>21 Q What was the reason for that conversation?</p> <p>22 A We were discussing the discovery task that</p> <p>23 I had been placed on by -- or maybe it was August</p> <p>24 then. The discovery task that I had been placed</p> <p>25 on by Pachulski and I was checking with</p>

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<p>153</p> <p>1 Mr. Ellington because he had been talking to</p> <p>2 Mr. Seery a lot and I wanted to see if there was</p> <p>3 anything I should be aware of.</p> <p>4 Q And did you discuss with Mr. Ellington</p> <p>5 whether or not you should disclose the ATE policy</p> <p>6 as part of the task you were assigned?</p> <p>7 A We discussed whether it was relevant to</p> <p>8 the task that I had been assigned and</p> <p>9 Mr. Ellington stated that he didn't believe that</p> <p>10 it was relevant to the task I was working on.</p> <p>11 Q You asked Mr. Ellington whether or not --</p> <p>12 in words or substance, you asked Mr. Ellington</p> <p>13 whether you should disclose the policy to</p> <p>14 Mr. Seery and the debtor's counsel?</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Correct?</p> <p>18 A That's not my testimony, no.</p> <p>19 Q Isn't it true that, in words or substance,</p> <p>20 you asked Mr. Ellington whether you should</p> <p>21 disclose the policy to Mr. Seery and the debtor's</p> <p>22 counsel?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 A That's not what our conversation was, no.</p> <p>25</p>	<p>155</p> <p>1 policy relevant to the task I was working on. But</p> <p>2 I just hadn't been privy to those conversations so</p> <p>3 I was checking.</p> <p>4 Q Did you offer your view to Mr. Ellington</p> <p>5 as to whether or not you should disclose the ATE</p> <p>6 policy to Mr. Seery and debtor's counsel?</p> <p>7 A I don't remember if I offered an opinion</p> <p>8 to Mr. Ellington. I think it was more focused on</p> <p>9 here's the task that I'm working on, is this</p> <p>10 relevant to that task.</p> <p>11 Q And he just said no, without any</p> <p>12 explanation or did he give you an explanation for</p> <p>13 his thinking?</p> <p>14 A I don't remember -- I don't remember what</p> <p>15 he said in that conversation. I remember the</p> <p>16 conclusion, but I also had asked -- another part</p> <p>17 of the conversation was, you've been talking to</p> <p>18 Seery, I haven't, so do -- you know, is this</p> <p>19 something I need to introduce or something that I</p> <p>20 need to interject into the task I'm working on.</p> <p>21 Q Why did you think it might be something</p> <p>22 that would appropriately be interjected into the</p> <p>23 task?</p> <p>24 A Well, that wasn't my testimony. My</p> <p>25 testimony is it was a thing to consider.</p>
<p>154</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you, in words or substance, ever ask</p> <p>3 Mr. Ellington whether you should disclose the</p> <p>4 policy?</p> <p>5 A To whom?</p> <p>6 Q To the debtor or their counsel.</p> <p>7 A So the conversation was, is the policy</p> <p>8 relevant to the task I'm working on, and the</p> <p>9 answer, Mr. Ellington said he didn't believe that</p> <p>10 it was and therefore didn't need to be included as</p> <p>11 materials in part of that task. And then I asked,</p> <p>12 you know, you've been in conversations with</p> <p>13 Mr. Seery, I don't talk to Mr. Seery hardly ever,</p> <p>14 so is there any other thing that -- any other --</p> <p>15 anything else that I should know or any other</p> <p>16 reason, you know, outside of my task that I should</p> <p>17 include it in the materials and Scott said no.</p> <p>18 Q Who initiated this conversation?</p> <p>19 A I don't recall. I take it back. I</p> <p>20 probably initiated it, I think.</p> <p>21 Q Why?</p> <p>22 A Because I wanted to understand if there</p> <p>23 had been kind of -- if there were separate</p> <p>24 contexts and conversations with Mr. Seery that I</p> <p>25 had not been privy to that would make the ATE</p>	<p>156</p> <p>1 Q Did you think that it might be something</p> <p>2 that would be appropriate to, as you say,</p> <p>3 interject into the task?</p> <p>4 A It would depend on the context. From the</p> <p>5 face of the task, probably not; but if there was</p> <p>6 further context based on Mr. Ellington's</p> <p>7 conversations with Mr. Seery that I didn't have,</p> <p>8 then I wanted to find out if that context existed.</p> <p>9 Q You knew that it was an urgent request</p> <p>10 from UBS to identify the total assets and history</p> <p>11 of the assets in CDO Fund/SOHC, correct?</p> <p>12 MS. SMITH: Objection, assumes facts not</p> <p>13 in evidence.</p> <p>14 A I don't know what you mean by urgent, sir.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q You were specifically advised that there</p> <p>17 was an urgent request, or words to that effect,</p> <p>18 from UBS for the debtor to identify the total</p> <p>19 assets and history of the assets in CDO Fund and</p> <p>20 SOHC; isn't that true?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I don't recall if the word urgent was</p> <p>23 used.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Whether the exact word urgent or high</p>

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<p>157</p> <p>1 priority or very important, was there any --</p> <p>2 anything like that that conveyed to you the</p> <p>3 importance of this task?</p> <p>4 A I believe it was conveyed to me that UBS</p> <p>5 thought the task was very important, but I don't</p> <p>6 know that that's necessarily what Pachulski's</p> <p>7 position was.</p> <p>8 Q Was it ever conveyed to you that it was a</p> <p>9 high priority task for you to assist in</p> <p>10 identifying all the assets and the history of the</p> <p>11 assets for SOHC and CDO Fund?</p> <p>12 A No.</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A Not that I recall. And it's certainly not</p> <p>15 the task ultimately that I was given.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Was it ever conveyed to you that the</p> <p>18 debtor had a high priority task for itself to</p> <p>19 identify the assets and history of the assets for</p> <p>20 SOHC and CDO Fund?</p> <p>21 A Not that I recall and that's certainly not</p> <p>22 at the end of kind of the iterative discussion</p> <p>23 process with Mr. Demo what I was tasked with</p> <p>24 doing.</p> <p>25 Q You said -- earlier, I was asking you</p>	<p>159</p> <p>1 A That's correct.</p> <p>2 Q Did you ever -- did you see a draft of the</p> <p>3 ATE policy before it was executed?</p> <p>4 A No, not that I recall. I don't -- no, I</p> <p>5 don't believe I ever saw a draft.</p> <p>6 Q Did you see an unsigned version of the ATE</p> <p>7 policy?</p> <p>8 A I don't believe I ever saw an unsigned</p> <p>9 copy of the ATE policy.</p> <p>10 Q Okay. So I'm trying to -- I'm going to</p> <p>11 try to ask this as broadly as possible, and if you</p> <p>12 don't understand the question, I'll repeat it.</p> <p>13 But are you basically -- are you saying that other</p> <p>14 than this one page that Mr. Sevilla showed you on</p> <p>15 his computer screen, you never saw any part of the</p> <p>16 ATE policy, whether it was executed or unexecuted,</p> <p>17 correct?</p> <p>18 A To the best of my recollection, that's</p> <p>19 correct.</p> <p>20 Q Did you ever try to see a copy of the ATE</p> <p>21 policy in connection with your work at Highland?</p> <p>22 A I never asked to see a copy of the ATE</p> <p>23 policy that I recall.</p> <p>24 Q When -- roughly when did Mr. Sevilla show</p> <p>25 you this one page from the ATE policy?</p>
<p>158</p> <p>1 about the ATE policy that was ultimately entered</p> <p>2 into. Remember that discussion?</p> <p>3 A Yes.</p> <p>4 Q I think you said that you only saw one</p> <p>5 page of it one time; is that right?</p> <p>6 A That's right.</p> <p>7 Q Who showed you that one page?</p> <p>8 A JP Sevilla.</p> <p>9 Q And how?</p> <p>10 A On his computer screen.</p> <p>11 Q Oh, he let you look at one page on his</p> <p>12 computer screen and other than that, you never saw</p> <p>13 the ATE policy as it was -- after it was actually</p> <p>14 executed?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 A I don't know that --</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Strike that. Let me ask the question</p> <p>19 again.</p> <p>20 Mr. Sevilla showed you one page from the</p> <p>21 ATE policy on his computer screen, correct?</p> <p>22 A Yes.</p> <p>23 Q And other than that one page that</p> <p>24 Mr. Sevilla showed you, you never saw the executed</p> <p>25 ATE policy, correct?</p>	<p>160</p> <p>1 A We were going into an update call with</p> <p>2 Beecher Carlson and I looked at it for about</p> <p>3 30 seconds and then continued on to the call. It</p> <p>4 would have been sometime in 2018 or '19 probably.</p> <p>5 Q Did it seem curious to you that you were</p> <p>6 only allowed to see one page from the ATE policy?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 A I disagree with the premise of the</p> <p>9 question, sir.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Okay.</p> <p>12 MR. CLUBOK: Let's go off the record.</p> <p>13 THE VIDEOGRAPHER: We are off the record</p> <p>14 at 2:21 p.m.</p> <p>15 (Recess taken from 2:21 p.m. CDT to</p> <p>16 2:22 p.m. CDT)</p> <p>17 THE VIDEOGRAPHER: 2:22 p.m., back on the</p> <p>18 record.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Did it seem unusual to you that</p> <p>21 Mr. Sevilla just showed you a page on his computer</p> <p>22 screen as opposed to sending you the policy so you</p> <p>23 could see it yourself?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 A Under the circumstances, it wasn't unusual</p>

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<p>161</p> <p>1 in the slightest.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q What were the circumstances?</p> <p>4 A We were about to have a call with Beecher</p> <p>5 Carlson. I was going to give an update on the</p> <p>6 litigation. I wanted to see the actual on the</p> <p>7 page who the insureds were so I could match it up</p> <p>8 with who the defendants were.</p> <p>9 Q I see.</p> <p>10 A I saw a single page that had the listed</p> <p>11 insureds, I looked at that page for anywhere from</p> <p>12 15 to 20 seconds while I was on my way walking to</p> <p>13 a conference room to have the call.</p> <p>14 Q Did you see who the -- did you know who</p> <p>15 the insurer was for the policy?</p> <p>16 A I knew it was Sentinel, but the exact name</p> <p>17 of the Sentinel entity, I don't.</p> <p>18 Q How did you come to know that Sentinel was</p> <p>19 the insurer for the policy?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 A I don't remember.</p> <p>22 MR. CLUBOK: Sorry, what was the form</p> <p>23 objection there?</p> <p>24 MS. SMITH: Well, there's more than one</p> <p>25 Sentinel entity and you said, how did you come to</p>	<p>163</p> <p>1 you learn that Sentinel was the insurer for the</p> <p>2 ATE policy?</p> <p>3 A I don't recall how I learned, but it would</p> <p>4 have been sometime around the time of the</p> <p>5 transaction in August 2017.</p> <p>6 Q That's -- okay. But it was contemplated</p> <p>7 for at least a couple months prior to that that</p> <p>8 Sentinel would be the insurer for an ATE policy,</p> <p>9 correct?</p> <p>10 MS. SMITH: Objection, assumes facts not</p> <p>11 in evidence.</p> <p>12 A I don't know that that's right. I don't</p> <p>13 recall that.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q You specifically at one point contemplated</p> <p>16 that Sentinel would be the insurer for the ATE</p> <p>17 policy; isn't that true?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A I disagree with one of the premises of</p> <p>20 your question. I'm happy to explain.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Yeah.</p> <p>23 A So if you're talking about what was</p> <p>24 contemplated in April of 2017, that was a</p> <p>25 completely different transaction than what was</p>
<p>162</p> <p>1 know that Sentinel was the insurer.</p> <p>2 MR. CLUBOK: Okay. Thank you.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I'll use the term Sentinel with the</p> <p>5 understanding that it is -- there's many different</p> <p>6 related entities that are called Sentinel perhaps</p> <p>7 and we'll just talk generally like we sometimes</p> <p>8 talk Highland generally about Sentinel; is that</p> <p>9 okay?</p> <p>10 A I don't actually know what any of the --</p> <p>11 what the Sentinel entities are. I just kind of</p> <p>12 know generally the name Sentinel.</p> <p>13 Q Yeah. Colloquially you call the insurer</p> <p>14 Sentinel, whether it's Sentinel something</p> <p>15 something sub or Sentinel something something?</p> <p>16 A Yeah, I know there were at least a couple</p> <p>17 of entities, but --</p> <p>18 Q Okay.</p> <p>19 A -- where the roles were, I just don't</p> <p>20 know.</p> <p>21 Q Okay. I'm not asking you to comment on</p> <p>22 that by saying what Sentinel -- your understanding</p> <p>23 of Sentinel did or didn't do. Okay?</p> <p>24 A Okay.</p> <p>25 Q Okay. So with that understanding, how did</p>	<p>164</p> <p>1 done in August of 2017. And so whatever role</p> <p>2 Sentinel was going to play in April was a</p> <p>3 different transaction than what happened in</p> <p>4 August.</p> <p>5 Q We'll talk about the differences</p> <p>6 between -- the supposed differences between the</p> <p>7 transactions. But certainly in April, you</p> <p>8 contemplated that Sentinel would write an ATE</p> <p>9 policy for the benefit of the Highland affiliates</p> <p>10 that were involved in the New York litigation,</p> <p>11 correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I don't recall exactly what the proposal</p> <p>14 was.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Isn't it true that at some point you</p> <p>17 contemplated Sentinel would write an ATE policy</p> <p>18 for the benefit of the Highland affiliates?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A I don't remember what the proposal was.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Do you -- and you don't remember ever</p> <p>23 contemplating that Sentinel would write an ATE</p> <p>24 policy; is that your testimony under oath?</p> <p>25 A That's not what I said, sir.</p>

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<p>1 Q Okay. Well, then, answer my question as 2 opposed to a question you want to answer. Isn't 3 it true that at some point you contemplated 4 Sentinel would write an ATE policy for the benefit 5 of the Highland affiliates involved in the 6 New York UBS litigation? 7 A I can -- I knew that Sentinel -- it was 8 contemplated that Sentinel would write an ATE 9 policy related to the UBS litigation, but who the 10 insureds were going to be and for whose benefit 11 that was going to be, I don't remember that 12 proposition at all. 13 Q And why do you claim the transaction that 14 was being contemplated in April of 2017 was 15 entirely different than the transaction that was 16 consummated in August of 2017? 17 A Because in April of 2017, what was 18 discussed then, and frankly didn't get very far, 19 was the idea of essentially getting into a 20 settlement agreement or getting to a number with 21 UBS for settlement and having an ATE policy serve 22 as kind of the funding mechanism for that 23 settlement. Two thousand -- August 2017 was -- 24 there was no settlement with UBS in service of 25 which the ATE policy would serve as a funding</p>	<p>165 1 Q Okay. Did you ever talk about the ATE 2 policy other -- about the -- strike that. 3 Did you ever talk about what the ATE 4 policy does for the insureds even if you didn't 5 see it? 6 A I don't recall those conversations. I'm 7 not sure that I did. 8 Q So you don't know the terms, fair to say, 9 of the ATE policy other than the name of the 10 insureds, correct? 11 A Correct. And even today I don't remember 12 what those names were. I just saw them on the 13 screen that one time. 14 Q So when you said with such certainty a 15 little bit ago under oath that the actual ATE 16 policy is entirely different than what you were 17 contemplating in April of 2017, that's not based 18 on actually knowing what the ATE policy actually 19 does? 20 MS. SMITH: Objection to form. 21 BY MR. CLUBOK: 22 Q Fair to say? 23 A I disagree with a premise of your 24 question. I'm happy to explain why. 25 Q Please. Thank you.</p>
<p>166 1 mechanism. So that's why they're two different 2 transactions. 3 Q Did the August -- so the actual ATE policy 4 that was entered into, did it provide for the 5 funding of a future settlement with UBS? 6 A I don't know what the policy said. I've 7 never seen it. 8 Q You've never seen the ATE policy that was 9 actually executed? 10 A No, sir, other than that one page. 11 Q That was a bit of a double negative, so 12 I'm going to ask it again. It's my fault because 13 I asked a negative and then you said no, sir. 14 A Fair enough. 15 Q You're saying it's true that you never 16 saw -- strike that. 17 It's true that you have to this day never 18 seen the entire ATE policy that was actually 19 executed, correct? 20 A It is true that to this day the only time 21 I've ever seen any part of the ATE policy was the 22 one page that I saw on Mr. Sevilla's screen for 23 about 15 to 20 seconds back in 2018 or '19. 24 Q All right. And you're sure about that? 25 A Yes, I am, sir.</p>	<p>167 1 A The April proposed transaction, my 2 understanding of it -- or recollection to the 3 extent that I do, was that that was supposed to be 4 essentially part of a single process in which we'd 5 already gotten to a number with UBS and we'd 6 agreed on a settlement and were negotiating a 7 settlement agreement. 8 In August of 2017, there was no such 9 settlement agreement with UBS. And so kind of by 10 definition, they can't be the same thing. 11 Regardless of the terms of the ultimate policy in 12 August of 2017, it was a different transaction. 13 Q But you don't know if the things that were 14 contemplated by the policy -- strike that. 15 As you sit here today, you don't know if 16 the -- well, strike that. 17 In April of 2017, you identified pros and 18 cons of entering into what was then a contemplated 19 ATE transaction, correct? 20 A I don't recall if I did or not, sir. 21 Q You certainly reviewed the pros and cons 22 of entering into a contemplated ATE transaction in 23 approximately April 2017, correct? 24 MS. SMITH: Objection, assumes facts not 25 in evidence.</p>

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<p>169</p> <p>1 A Can you restate the question, sir?</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q You reviewed an identification of the</p> <p>4 potential benefits of entering into the</p> <p>5 contemplated ATE transaction in approximately</p> <p>6 April 2017, correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 A I remember it was a concept around that</p> <p>9 time, but -- that there would be an ATE policy to</p> <p>10 fund a potential settlement, but I really don't</p> <p>11 remember much more than that.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Well, you remember that somebody had laid</p> <p>14 out the potential benefits of doing that, correct?</p> <p>15 A Actually, I don't.</p> <p>16 Q Did you have any role in identifying the</p> <p>17 potential benefits of entering into an ATE</p> <p>18 transaction at any point?</p> <p>19 A Not that I recall, but if you would like</p> <p>20 to show me a document, I'm happy to have my</p> <p>21 recollection refreshed.</p> <p>22 Q Okay. Let's hand you what's been marked</p> <p>23 as Exhibit 47. Exhibit 47 is an e-mail from you,</p> <p>24 Isaac Leventon, to JP Sevilla with a subject UBS</p> <p>25 Settlement Structure (9.pptx), and it's dated</p>	<p>171</p> <p>1 MR. CLUBOK: Yes, this is the complete</p> <p>2 copy of this attachment. Appendix 1 was sent in a</p> <p>3 separate e-mail, which we'll get to.</p> <p>4 MS. SMITH: Okay.</p> <p>5 MR. CLUBOK: When they sent this</p> <p>6 PowerPoint, they just had a placeholder for</p> <p>7 Appendix 1, apparently, at least as far as we can</p> <p>8 tell.</p> <p>9 A I've reviewed the document, sir.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Okay. Did you draft this document?</p> <p>12 A I don't know if I did or not.</p> <p>13 Q Do you recognize it?</p> <p>14 A I know I've seen it before. I have no</p> <p>15 reason to dispute that I didn't receive it -- or</p> <p>16 send it, I should say.</p> <p>17 Q You didn't just receive it --</p> <p>18 A I said or send it, I should say.</p> <p>19 Q Okay. And you played some role in</p> <p>20 drafting this document at least, correct?</p> <p>21 A I don't remember if I did or not, sir.</p> <p>22 But the metadata will answer that question kind of</p> <p>23 easily.</p> <p>24 Q Isn't it true that you drafted this</p> <p>25 document together with Stephanie Vitiello?</p>
<p>170</p> <p>1 April 19th, 2017. And it attaches a document</p> <p>2 called UBS_Settlement_Structure_9.pptx.</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And page 1 of Exhibit 47 is the cover</p> <p>6 e-mail that has no substance in it, other than</p> <p>7 what I just described, and the remaining pages are</p> <p>8 the attachments. Do you see that?</p> <p>9 A I do, yes.</p> <p>10 Q Now, the first page of the attachment says</p> <p>11 Settlement Analysis, UBS versus, and has the</p> <p>12 Highland logo, correct?</p> <p>13 A It does.</p> <p>14 Q And then the first page talks about what</p> <p>15 happens: If Highland does not settle. And then</p> <p>16 the second page says: Taxes: If Highland Wins...</p> <p>17 it Loses. Third page says: If Highland does not</p> <p>18 settle: UBS Appeals. Et cetera, et cetera.</p> <p>19 Do you see that?</p> <p>20 A I'm reviewing the document.</p> <p>21 (Witness reviews document.)</p> <p>22 MS. SMITH: While he's looking at this,</p> <p>23 Andy, is this a complete copy of the exhibit?</p> <p>24 Because it -- there's an odd Appendix 1 on the</p> <p>25 last page.</p>	<p>172</p> <p>1 MS. SMITH: Objection, assumes facts not</p> <p>2 in evidence.</p> <p>3 A If that's what the metadata says, I don't</p> <p>4 dispute it, but I don't know or recall, I should</p> <p>5 say.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Who -- do you recall being asked to draft</p> <p>8 a presentation like this?</p> <p>9 A I don't remember, sir.</p> <p>10 Q You're looking at this document now and it</p> <p>11 doesn't ring any bell as to the origin of this</p> <p>12 document?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A Like I said, I don't remember if I drafted</p> <p>15 this document or not, but the metadata will answer</p> <p>16 the question affirmatively.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q We would need the metadata to answer that</p> <p>19 question given your lack of recollection, correct?</p> <p>20 A You would need the debtor to provide you</p> <p>21 with that metadata.</p> <p>22 Q What did you do with this presentation</p> <p>23 other than send it to Mr. Sevilla?</p> <p>24 A I don't recall. But again, if I sent it</p> <p>25 to someone else, it would be in the debtor's</p>

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<p>173</p> <p>1 documents.</p> <p>2 Q The second page of the attachment gives a</p> <p>3 bottom line that there's no upside to going to</p> <p>4 trial in either the UBS or the Citi matter,</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q Did you -- did Highland go to trial in the</p> <p>8 Citi matter?</p> <p>9 A No.</p> <p>10 Q What happened in that matter?</p> <p>11 A It settled.</p> <p>12 Q For how much?</p> <p>13 A It was more than 500,000, but I think less</p> <p>14 than a million.</p> <p>15 Q Okay. And when?</p> <p>16 A Oh, wow. 2018 or '19 sometime.</p> <p>17 Q Okay. So sometime after this presentation</p> <p>18 was sent in April of 2017, correct?</p> <p>19 A Correct.</p> <p>20 Q And is that Citi matter totally settled,</p> <p>21 done?</p> <p>22 A Yes.</p> <p>23 Q And it was settled for something less than</p> <p>24 a million dollars?</p> <p>25 A That's my recollection.</p>	<p>175</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q At one point you specifically estimated</p> <p>3 the liability in excess of hundreds of millions of</p> <p>4 dollars -- strike that.</p> <p>5 At one point you, for purposes of a</p> <p>6 solvency analysis, estimated the liability at</p> <p>7 being well in excess of \$100 million, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A I don't recall what you're talking about,</p> <p>10 but if you want to show me a document to refresh</p> <p>11 my recollection, I'm happy to look at it.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Do you -- as you sit here today, are you</p> <p>14 able to deny that you did that?</p> <p>15 A I can neither confirm nor deny it, sir. I</p> <p>16 just don't know what you're talking about.</p> <p>17 Q So you -- okay. Getting back to this.</p> <p>18 You believed in April of 2017, that if UBS were to</p> <p>19 win, Highland would lose all of the assets in HFP</p> <p>20 and CDO Fund, correct?</p> <p>21 MS. SMITH: Objection to form. This is</p> <p>22 not necessarily what he believes.</p> <p>23 MR. CLUBOK: Okay. Ms. Smith, I have not</p> <p>24 said anything about your speaking objections.</p> <p>25 Things like assumes facts not in evidence, saying</p>
<p>174</p> <p>1 Q Okay. So the -- and the UBS case</p> <p>2 meanwhile at this time was -- you knew that the</p> <p>3 potential liability was over a billion dollars,</p> <p>4 right?</p> <p>5 A I knew that UBS was alleging over a</p> <p>6 billion dollars in damages against the</p> <p>7 counterparty funds and it also alleged some quasi</p> <p>8 contractual claims for that liability against HCM</p> <p>9 itself.</p> <p>10 Q In fact, you knew that HCM faced potential</p> <p>11 liability to backstop HFP and CDO Fund for up to</p> <p>12 \$1.2 billion; isn't that true?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A I knew that was UBS's argument. I didn't</p> <p>15 necessarily agree with it.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Right. But you certainly were aware that</p> <p>18 Highland was facing a clawback of \$9 million and</p> <p>19 liability to backstop HFP and CDO Fund for up to</p> <p>20 \$1.2 billion, correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 A I was aware that that was a possible worst</p> <p>23 case scenario. I didn't necessarily agree that it</p> <p>24 was probable or that UBS's arguments in support of</p> <p>25 that position were valid.</p>	<p>176</p> <p>1 that comment you made there, I tried to ignore it,</p> <p>2 because it goes beyond what you're allowed to say</p> <p>3 in this proceeding. You say objection to form and</p> <p>4 nothing else unless you want to -- unless you have</p> <p>5 a privilege to assert. So please do not make any</p> <p>6 further speaking objections.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Mr. Leventon, isn't it true that in April</p> <p>9 of 2017, you believed that if UBS wins, Highland</p> <p>10 would lose all the assets in HFP/CDO Fund?</p> <p>11 A I believed that that was one of the</p> <p>12 worst-case scenarios that was possible, yes.</p> <p>13 Q And you believe that the HFP assets at</p> <p>14 that time in April of 2017, included an</p> <p>15 approximately \$32 million note payable from the</p> <p>16 donor advised fund or the DAF, correct?</p> <p>17 A It does say that HFP assets include</p> <p>18 32 million of DAF note payable.</p> <p>19 Q And that DAF refers to a DAF that was</p> <p>20 established by Mr. Dondero?</p> <p>21 A I don't necessarily believe that's</p> <p>22 correct, no.</p> <p>23 Q Who was the DAF established by?</p> <p>24 A I don't know specifically, but I believe</p> <p>25 it was the debtor itself.</p>

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<p>177</p> <p>1 Q Okay. The debtor, though, was 80 percent 2 owned by Mr. Dondero, right?</p> <p>3 A I actually don't know.</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q You don't know the ownership of -- prior 7 to bankruptcy, did you know the ownership interest 8 of Mr. Dondero and HCM?</p> <p>9 A Immediately prior to bankruptcy, I think I 10 did because we had to know that type of 11 information for kind of first day schedules, but 12 prior to that, no.</p> <p>13 Q Did you know -- because it came up many 14 times in the litigation with UBS and HCM, that 15 Mr. Dondero's stake in HCM in this time frame was 16 approximately 80 percent?</p> <p>17 MS. SMITH: Objection. I'm concerned that 18 he has confidentiality issues when you're talking 19 about things that happened in the course of 20 settlement or mediation.</p> <p>21 MR. CLUBOK: No, no. This was in public 22 documents upon public documents upon public 23 documents, it was used in open court, it was said 24 in the trial. This is nothing confidential at 25 all.</p>	<p>179</p> <p>1 A Sir, my testimony is I know that there was 2 some transaction that would have reduced 3 Mr. Dondero's economic interest and the documents 4 will speak for themselves as to exactly when that 5 transaction took place. I just -- I don't know 6 exactly when it took place.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Okay.</p> <p>9 A And I wasn't involved in that transaction 10 either.</p> <p>11 Q All right. The DAF was considered an 12 affiliated entity to Highland Capital Management, 13 correct?</p> <p>14 A The compliance department via Mr. Sargent 15 determined that the DAF was not -- I don't 16 believe -- I think it determined it wasn't an 17 affiliate.</p> <p>18 Q You believed that if Highland didn't 19 settle, it was facing years of fraudulent transfer 20 claims throughout the Highland structure, correct?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I believe that that was a possible 23 worst-case scenario.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q By the way, you don't use anywhere on this</p>
<p>178</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Isn't it true, sir, that in 2017, 3 Mr. Dondero's stake in HCM was approximately 4 80 percent?</p> <p>5 A I don't know.</p> <p>6 Q Okay.</p> <p>7 A It -- I don't know.</p> <p>8 Q You knew at the time of trial that 9 Mr. Dondero's stake was identified as being 10 approximately 80 percent; isn't that true?</p> <p>11 A The reason I'm qualifying it is because I 12 know that there were some transaction that reduced 13 his interest from whatever it was down to a much, 14 much smaller percentage. I just don't remember 15 exactly when that transaction took place.</p> <p>16 Q Okay. And that transaction you're 17 referring to was a transfer to trusts or something 18 that he still had the beneficial ownership in, 19 correct?</p> <p>20 A No, that's not correct.</p> <p>21 Q Mr. Dondero had the vast majority of the 22 economic interest in Highland Capital Management 23 during the time frame that you wrote this memo; 24 isn't that true?</p> <p>25 MS. SMITH: Objection, form.</p>	<p>180</p> <p>1 document that you sent to Mr. Sevilla possible 2 worst-case scenario to qualify what happens if UBS 3 wins, correct?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 A No, these are -- if you read the document, 6 these are the kind of two extremes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q I understand.</p> <p>9 A If UBS wins or if Highland wins.</p> <p>10 Q Okay. But you don't say anywhere this is 11 possible worst-case scenario or otherwise qualify 12 it in this analysis, correct?</p> <p>13 A It doesn't say that on that page.</p> <p>14 Q On the other hand, that if Highland were 15 to win, you understood that that would result in 16 over \$50 million in tax liability to Mr. Dondero 17 personally, correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 A I don't think that's right. That's not 20 what it says here.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q If you can turn -- but it refers to 23 Slide 3. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And do you see where it says that: Taxes:</p>

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<p>181</p> <p>1 If Highland wins... it Loses?</p> <p>2 A I do see that and it does say -- I was</p> <p>3 looking at the second page of the presentation.</p> <p>4 Looking at the third page, it does say Mr. Dondero</p> <p>5 would have to pay approximately \$50 million in</p> <p>6 taxes.</p> <p>7 Q Yeah. So you understood -- and by the</p> <p>8 way, all the other people who would have suffered</p> <p>9 tax consequences if Highland were to win would</p> <p>10 have had a litigation claim for mismanagement</p> <p>11 against HCM and Dondero, correct?</p> <p>12 A They could have asserted that claim. It</p> <p>13 was -- I mean, my job was to identify risk. That</p> <p>14 was a risk I identified.</p> <p>15 Q And you also understood at the time, that</p> <p>16 Dondero was the decision-maker for Highland</p> <p>17 Financial Partners, correct?</p> <p>18 A I believe that's right.</p> <p>19 Q And getting back to Mr. Dondero's --</p> <p>20 consequences to Mr. Dondero, if Highland were to</p> <p>21 win completely at trial, that would mean that</p> <p>22 Mr. Dondero personally would have a \$50 million</p> <p>23 tax hit, correct?</p> <p>24 A That's what this says.</p> <p>25 Q And that was your understanding at the</p>	<p>183</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay. But you -- again, my question was</p> <p>3 just about Mr. Dondero, not all the other major</p> <p>4 banks and Wall Street. So getting back to my</p> <p>5 question. You had specifically discussed with</p> <p>6 Mr. Ellington that there would be significant tax</p> <p>7 consequences for Mr. Dondero if Highland were to</p> <p>8 defeat UBS in the litigation with respect to the</p> <p>9 claims against HFP, correct?</p> <p>10 A Well, I'm disagreeing with the word</p> <p>11 specifically, because we discussed that among</p> <p>12 numerous other potential parties that would have</p> <p>13 significant tax consequences, not just the ones on</p> <p>14 this page.</p> <p>15 Q I didn't say exclusively, I said</p> <p>16 specifically. I'm not using the word exclusively.</p> <p>17 I'm using the word specifically. You specifically</p> <p>18 identified that there would be a \$50 million plus</p> <p>19 tax hit to Mr. Dondero, correct?</p> <p>20 A I don't remember if I drafted this</p> <p>21 document or not, but this document specifically</p> <p>22 lists a \$50 million potential tax liability for</p> <p>23 Mr. Dondero.</p> <p>24 Q So you were aware of that specifically</p> <p>25 with respect to Mr. Dondero, correct?</p>
<p>182</p> <p>1 time, right?</p> <p>2 A I would say that is what had been</p> <p>3 represented to me by the tax department and it is</p> <p>4 nonincumbent on a nontax person to second-guess</p> <p>5 what the tax department says is going to happen in</p> <p>6 a given situation.</p> <p>7 Q Sure. And it was -- you had also</p> <p>8 discussed that with Mr. Ellington too, that there</p> <p>9 would be significant tax consequences for</p> <p>10 Mr. Dondero if Highland were to defeat UBS and</p> <p>11 therefore HFP were to be solvent, correct?</p> <p>12 A We had discussed the consequences to</p> <p>13 Dondero, but also to all of the other HFP limited</p> <p>14 partners.</p> <p>15 Q Right. But the specific consequences to</p> <p>16 Dondero -- economic consequences dwarfed all the</p> <p>17 others, correct?</p> <p>18 A Well, this isn't --</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 A This isn't all the limited partners in</p> <p>21 HFP. There were -- almost every Wall Street bank</p> <p>22 you could think of had a significant interest in</p> <p>23 HFP and would have been in the same situation as</p> <p>24 the people listed on Slide 3.</p> <p>25</p>	<p>184</p> <p>1 A I would have been aware of that and the</p> <p>2 variety of other parties, yes.</p> <p>3 MR. CLUBOK: Move to strike.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q I'm not asking about those. I'm going to</p> <p>6 get to what you were aware about the other</p> <p>7 parties. So with respect to Mr. Dondero, though,</p> <p>8 fair to say that you and Mr. Ellington, amongst</p> <p>9 other conversations about the tax consequences of</p> <p>10 HFP prevailing, specifically discussed that would</p> <p>11 mean more than a \$50 million hit to Mr. Dondero,</p> <p>12 correct?</p> <p>13 A We discussed that among the parties that</p> <p>14 would suffer significant tax consequences,</p> <p>15 Mr. Dondero was one of them and that the tax</p> <p>16 department had advised us that his exposure was</p> <p>17 approximately \$50 million.</p> <p>18 Q Okay. Thank you. Now, by the way, that's</p> <p>19 because HFP had been insolvent or been declared</p> <p>20 insolvent prior to this time, correct?</p> <p>21 A I believe that's correct.</p> <p>22 Q And HFP, in fact, was insolvent going back</p> <p>23 to prior to the time you joined Highland Capital</p> <p>24 Management in 2009, correct?</p> <p>25 A That's correct.</p>

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<p>185</p> <p>1 Q And it's also the case that you had 2 determined -- strike that. I say you. 3 It's also the case that HCM had determined 4 that CDO Fund was insolvent, correct? 5 A I think that's fair, yes. 6 Q And they had made that determination prior 7 to April of 2017, correct? 8 A Yes. 9 Q And SOHC was just -- SOHC just was a 10 wholly owned sub of HFP. So SOHC was also 11 insolvent dating back to prior to when you joined 12 HCM, correct? 13 MS. SMITH: Objection, form. 14 A I don't know the answer to that question 15 because I don't remember if there was an 16 insolvency analysis on SOHC. 17 BY MR. CLUBOK: 18 Q There was no separate -- you're not aware 19 of a separate insolvency analysis specific to SOHC 20 as opposed to it being part of the consolidated 21 group that included HFP, correct? 22 A I remember that there was a letter that 23 went out to HFP investors that said HFP is 24 insolvent and that that was approximately January 25 of 2009, but it didn't mention SOHC and there was</p>	<p>187</p> <p>1 Q Well, was it truthful? 2 A I assume so. I have no idea actually. 3 Q Do you have any reason to believe that 4 CDO Fund was not insolvent as of March 2009? 5 A No. 6 Q Do you have any reason to believe that HFP 7 was not insolvent as of January 2009? 8 A No. Those are accounting determinations 9 and the accountant's determinations on those 10 issues are final. 11 Q But the concern in layman's terms or 12 colloquial terms was that if HFP were to defeat 13 UBS at trial, that insolvency determination might 14 have to be in some measure reversed, thus 15 generating tax liability; is that correct, in -- 16 MS. SMITH: Objection, form. 17 BY MR. CLUBOK: 18 Q -- in a rough approximation without being 19 technical? 20 A It's partially correct. 21 Q What's partially not correct? 22 A Well, I think it -- at that time it was 23 both -- for HFP, it was just UBS. For CDO Fund, 24 it was UBS and Citibank, I think. 25 Q But the Citibank -- was that the million</p>
<p>186</p> <p>1 no separate equivalent letter for SOHC. 2 Q Okay. Well, there are no investors to 3 SOHC. SOHC is just a wholly owned sub of HFP, 4 correct? 5 A HFP is SOHC's sole investor, yes. 6 Q Okay. And as of at least January 2009, 7 HFP was insolvent, correct? 8 A Yes. 9 Q And also as of January 2009, CDO Fund was 10 insolvent? 11 A I believe that CDO Fund's letter went out 12 to its investors closer to like March of 2009, so 13 it would have been that time period. Now, from an 14 accounting perspective when exactly were they 15 insolvent, I don't know. 16 Q Okay. 17 A But from a legal perspective when did we 18 give notice to -- or when -- let me rephrase, 19 sorry. When did Highland give notice to the 20 investors in those respective entities, those are 21 the documents I've seen and that I remember. 22 Q Okay. So CDO Fund was insolvent at or 23 prior to March of 2009, correct? 24 A It stated to its investors, I think in 25 March of 2009 that it was insolvent.</p>	<p>188</p> <p>1 dollar liability -- or the matter to Citibank that 2 was ultimately settled for less than a million 3 dollars? 4 A Yes. 5 Q I see. So CDO Fund -- I guess I don't 6 understand. 7 A Let's back up and do this again. 8 Q Sure. With respect to HFP -- 9 A Okay. 10 Q -- the concern was that if it were to 11 defeat UBS at trial and be able to retain some of 12 the assets it held, the insolvency determination 13 could be reversed to some degree thus generating 14 the tax liability, correct? 15 A I believe that's a fair description 16 without sitting here today and being a tax expert. 17 Q And there was a similar concern with 18 respect to the CDO insolvency determination, if 19 somehow CDO were to fully prevail against UBS and 20 be able to retain the assets? 21 A Again, that's partially correct with 22 respect to CDO Fund. 23 Q Well, you're saying that that was also a 24 potential concern with respect to Citi in addition 25 to that being true with respect to UBS, correct?</p>

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<p>189</p> <p>1 A I think for Citi -- let me -- sorry, let 2 me rephrase. For CDO Fund, the insolvency would 3 be reversed if it successfully defeated both UBS 4 and Citibank. 5 Q Right. Right. So it -- CDO Fund would 6 have had to win both in order to have insolvency 7 analysis reversed? 8 A As of this time period, that's correct. 9 Q Right. 10 A Please let me know when we hit a break. 11 Q Oh, we can take a break if you want. 12 A You sure? 13 Q Of course. 14 A I wanted to let you finish your series of 15 questions. 16 Q I like to give people breaks within reason 17 whenever they ask. You've been good about that. 18 THE VIDEOGRAPHER: We are off the record 19 at 2:57 p.m. 20 (Recess taken from 2:57 p.m. CDT to 21 3:06 p.m. CDT) 22 THE VIDEOGRAPHER: The time is 3:06 p.m. 23 We are back on the record. 24 BY MR. CLUBOK: 25 Q Going back to page 2, one of the things</p>	<p>191</p> <p>1 seven-step proposal to determine whether it could 2 possibly be considered to be a fraudulent 3 transfer? 4 A In the context, I don't believe that would 5 have made any sense to conduct -- 6 Q Is that a no to my question? 7 A -- that analysis. Well, it's a -- it 8 would have been counterintuitive and non -- 9 illogical to kind of perform that analysis in 10 conjunction with this proposal because this was 11 supposed to be a proposal for a settlement with 12 UBS. 13 Q And what you testified before under oath 14 was that the thinking was that there would be a 15 settlement first with a number and then you'd go 16 out and get an ATE policy to fund that settlement. 17 I'm paraphrasing a little, but that's the way 18 you've described it several times today, correct? 19 A Essentially that you would be on the 20 precipice of settlement, that you would be close 21 enough that it was worth going out and getting 22 funding for what ultimately would be the 23 settlement. 24 Q But in your -- the way you described it 25 earlier today, you would already know the amount</p>
<p>190</p> <p>1 that was contemplated if UBS wins is that Highland 2 could face years of fraudulent transfer claims 3 throughout the Highland structure, correct? 4 A That was one of the things that was 5 contemplated, yes. 6 Q And fraudulent -- there were fraudulent 7 transfers claims in the New York litigation, 8 right, in addition to breach of contract claims we 9 talked about? 10 A Yes. 11 Q When this -- and by the way, this 12 settlement analysis ends with a proposal -- a 13 seven-step proposal, right? 14 A It does appear to have a proposed 15 settlement structure summary. 16 Q As far as you know, was any analysis done 17 of this seven-step proposal to determine whether 18 it would constitute a fraudulent transfer? 19 A Well, I guess that assumes -- that assumes 20 facts that I disagree with, and I can explain why. 21 Q My question is this: There was a -- 22 there's a settlement analysis that includes a 23 seven-step proposal for consideration, right? 24 A Yes. 25 Q And was there any analysis done about that</p>	<p>192</p> <p>1 of the settlement prior to getting the ATE policy, 2 correct? 3 A Maybe that was a slight overstatement. I 4 should have said approximate amount. 5 Q Okay. You'd know the approximate amount? 6 A Right. 7 Q And what was the approximate amount that 8 was being contemplated in terms of settling with 9 UBS when this proposal was being considered? 10 A I don't know because all the settlement 11 conversations were -- as far as I was aware, were 12 between yourself and Mr. Ellington. 13 Q What did you understand the approximate 14 amount of settlement that was being contemplated? 15 A I didn't have an understanding. 16 Mr. Ellington did not share that information with 17 me. 18 Q You had no idea if it was 1 million or 19 \$100 million? 20 A I didn't. 21 Q And did you ever come to have any 22 understanding at all of a magnitude of a potential 23 settlement with UBS? 24 A Yes. 25 Q Okay. When was that?</p>

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<p>193</p> <p>1 A There was a proposed settlement with UBS</p> <p>2 for I want to say 72.5 million that was drafted</p> <p>3 but never executed. I want to say that was in</p> <p>4 2014 or '15 sometime. That's when I had an</p> <p>5 understanding of a magnitude of potential</p> <p>6 settlements with UBS.</p> <p>7 Q Okay. And that settlement after -- you</p> <p>8 understood that that settlement wasn't executed,</p> <p>9 although there was a settlement with two of the</p> <p>10 defendants, namely Crusader and Credit Strategies,</p> <p>11 correct?</p> <p>12 A Those were subsequent separate settlement</p> <p>13 agreements is my understanding.</p> <p>14 Q Okay.</p> <p>15 A That there was a proposed -- I'll call it</p> <p>16 global settlement, which was all of the claims</p> <p>17 filed by UBS against all of the defendants, that</p> <p>18 was drafted but never fully executed and then</p> <p>19 there were separate executed settlements between</p> <p>20 UBS and Crusader on the one hand and UBS and</p> <p>21 Credit Strategies on the other.</p> <p>22 Q And that was all in the 2014-2015 time</p> <p>23 frame, correct?</p> <p>24 A I think it was primarily 2015.</p> <p>25 Q Okay. After that point, did you ever</p>	<p>195</p> <p>1 struggling with the question, but I -- this is --</p> <p>2 this is the summary, I guess, of the potential</p> <p>3 outcomes if the settlement process is completed.</p> <p>4 Q If the settlement process that's laid out</p> <p>5 in this presentation is completed?</p> <p>6 A Yes.</p> <p>7 Q Okay. And the first -- one thing that</p> <p>8 would happen is that Sentinel would then control</p> <p>9 HFP/CDO Fund assets, correct?</p> <p>10 A That's what this says, yes.</p> <p>11 Q And it was believed that it was currently</p> <p>12 a total of about \$94 million, right?</p> <p>13 A That's what the document says. I have no</p> <p>14 independent recollection of that information.</p> <p>15 Q Who determined that the assets were worth</p> <p>16 approximately \$94 million at this time?</p> <p>17 A I don't know. It would have been someone</p> <p>18 in the accounting department most likely.</p> <p>19 Q Did they do that at your direction?</p> <p>20 A I don't remember that.</p> <p>21 Q Do you see at the very last page of this</p> <p>22 document it says Appendix 1 and it's blank?</p> <p>23 A I do see that, yes.</p> <p>24 Q And Ms. Smith asked before if we had a</p> <p>25 complete document here and I had said I believe</p>
<p>194</p> <p>1 again hear about any magnitude of a potential</p> <p>2 settlement with UBS?</p> <p>3 A No, not that I recall.</p> <p>4 Q When you were involved with this</p> <p>5 settlement analysis, was there any number being</p> <p>6 contemplated for a total amount that would be used</p> <p>7 to settle with UBS?</p> <p>8 A I wasn't contemplating any amount and I</p> <p>9 don't know what other people were or were not</p> <p>10 contemplating.</p> <p>11 Q Well, let's look at the document further</p> <p>12 and see if it's here. You see on -- let's start,</p> <p>13 though, with Slide 6. Slide 6 says: If Highland</p> <p>14 Settles...</p> <p>15 You see that?</p> <p>16 A Yes.</p> <p>17 Q And under -- and this is assuming the</p> <p>18 proposal that's going to be laid out step by step</p> <p>19 later in the presentation, correct?</p> <p>20 A I'm sorry, say that again.</p> <p>21 Q This -- if Highland settles and all these</p> <p>22 things that would happen, this assumes that the</p> <p>23 seven-step proposal that's laid out later in the</p> <p>24 presentation goes into effect, correct?</p> <p>25 A I think that's -- I apologize. I'm</p>	<p>196</p> <p>1 that Appendix 1 was sent separately from this</p> <p>2 e-mail. And I'm going to hand you what we'll mark</p> <p>3 as Exhibit 67.</p> <p>4 (Deposition Exhibit 67 marked for</p> <p>5 identification.)</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Exhibit 67 is an e-mail from you to</p> <p>8 Stephanie Vitiello, dated April 13th, 2017, that</p> <p>9 is -- got a subject UBS Settlement Assets.xlxs and</p> <p>10 it's got an attachment, which is the second page</p> <p>11 of Exhibit 67. And you'll note on the first page</p> <p>12 in the cover e-mail it says, Appendix 1. Do you</p> <p>13 see that?</p> <p>14 A I do.</p> <p>15 Q And if you turn to the second page, you</p> <p>16 see there is a list of assets with the bottom --</p> <p>17 in the middle towards the bottom it says, Total</p> <p>18 Assets 94,057,547. Do you see that?</p> <p>19 A I'm sorry, say that one more time, please.</p> <p>20 Q Do you see where there's a subtotal -- or</p> <p>21 there's a total of all the total assets and a</p> <p>22 black bar towards the bottom of the page? Do you</p> <p>23 see that?</p> <p>24 A The gross assets?</p> <p>25 Q Yeah.</p>

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<p>197</p> <p>1 A Okay.</p> <p>2 Q The gross assets total, according to this,</p> <p>3 about \$94 million. Do you see that?</p> <p>4 A I do see that, yes.</p> <p>5 Q And this document on page 1 is identified</p> <p>6 as Appendix 1, and you can see at the end of</p> <p>7 Exhibit 47, it's a reference to Appendix 1 and the</p> <p>8 94 million matches up with page 6. Do you see all</p> <p>9 that?</p> <p>10 A I do see that, yes.</p> <p>11 Q And Stephanie Vitiello was a woman that</p> <p>12 you said worked with you sometimes on various</p> <p>13 matters?</p> <p>14 A She's an attorney who worked with me, yes.</p> <p>15 Q Yeah. And the question is, did you -- who</p> <p>16 would you have gone to to generate Appendix 1 that</p> <p>17 you were sending to Stephanie Vitiello on</p> <p>18 April 13th, 2017?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A I don't know specifically. It would have</p> <p>21 been someone in the accounting department I would</p> <p>22 guess.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And that is your e-mail address, right, on</p> <p>25 Exhibit 67?</p>	<p>199</p> <p>1 the Excel spreadsheet. I just don't want to keep</p> <p>2 talking about this knowing that I think there's an</p> <p>3 error in the formula. It's just like somebody,</p> <p>4 you know, an Excel, like they didn't add the last</p> <p>5 line in or something like that, so I believe this</p> <p>6 total, which looks like it totals everything, is</p> <p>7 really just totalling everything except for the</p> <p>8 cash, just so you know.</p> <p>9 A Okay. I'll -- I won't re-create the math</p> <p>10 here. That's certainly a possibility.</p> <p>11 Q And we can do that. We can -- we'll have</p> <p>12 the Excel thing if we want to do it later. We'll</p> <p>13 show it to you, but I just want to make that</p> <p>14 clear. I'm not trying to -- it looks like, for</p> <p>15 what it's worth, I take it you never -- you never</p> <p>16 knew about that potential error, until I just</p> <p>17 mentioned it, right?</p> <p>18 A I'm kind of embarrassed that there's an</p> <p>19 error in a Highland document that --</p> <p>20 Q Well, it's Excel. I could -- bottom line</p> <p>21 is, I presume that you would have just relied on</p> <p>22 the Excel, you know, calculation to assume that</p> <p>23 the right number is 94, whether or not there's an</p> <p>24 error.</p> <p>25 A Sir, I honestly don't recall, but I do</p>
<p>198</p> <p>1 A 67 or 47?</p> <p>2 Q 67. The Appendix 1.</p> <p>3 A Sorry, I was looking at the wrong one.</p> <p>4 Say that -- let's have a clean record. Why don't</p> <p>5 you repeat your question one more time.</p> <p>6 Q Sure. Exhibit 67 is an e-mail from you to</p> <p>7 Stephanie Vitiello attaching what becomes</p> <p>8 Appendix 1 for the settlement analysis that's</p> <p>9 reflected in Exhibit 47, correct?</p> <p>10 A I don't have any independent recollection,</p> <p>11 but that's what this appears to be.</p> <p>12 Q By the way, I will represent to you that</p> <p>13 we got a native file of Exhibit 67, this Excel</p> <p>14 spreadsheet. And if we need to, we will, but I</p> <p>15 will tell you for the record that that 94 million</p> <p>16 appears to be the function of an error in the</p> <p>17 calculation and it seems to have -- that</p> <p>18 94,057,547 I'll just represent to you and we can</p> <p>19 put the Excel spreadsheet up at some point if</p> <p>20 necessary, it's the total for all the assets</p> <p>21 above, not including the cash. So when you add</p> <p>22 the cash in there, it gets up to something more</p> <p>23 like 98 or 99 million.</p> <p>24 A Okay.</p> <p>25 Q That's my understanding. We can pull up</p>	<p>200</p> <p>1 believe that it -- first of all, I'm not saying --</p> <p>2 again, you're saying you and I'm not sure that I</p> <p>3 drafted this document that's attached to</p> <p>4 Exhibit 47. But it does appear that whoever</p> <p>5 drafted it included the number from document 67.</p> <p>6 Q Right. Fair enough. And whoever put</p> <p>7 together that Excel spreadsheet, I'm not asking</p> <p>8 you to -- I'll represent to you that it appears</p> <p>9 there was an error, which you can look at at</p> <p>10 your -- at the time and just -- I take it -- I</p> <p>11 only bring this up because I take it you never --</p> <p>12 no one ever brought this potential error to your</p> <p>13 attention until now?</p> <p>14 A I don't remember this document and I don't</p> <p>15 remember any mention of an error.</p> <p>16 Q Okay. That's fine.</p> <p>17 So turning back, then, to the document.</p> <p>18 When it says Sentinel controls, that's why when I</p> <p>19 say currently 94, let's just agree that it was</p> <p>20 intended to be the total of Appendix 1 regardless</p> <p>21 of whether there's an error or not; is that fair?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A Sir, because I don't have any independent</p> <p>24 recollection of this, I can only say that your</p> <p>25 analysis of the documents seems to be a fair one,</p>

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<p style="text-align: right;">201</p> <p>1 but I'm not saying that's what happened. It just 2 happens to be something that might have been what 3 happened. 4 BY MR. CLUBOK: 5 Q Okay. Thanks for that clarification. 6 In any event, whether it's 94 or 98, that 7 doesn't change the point that's being made in 8 No. 1, which is if Highland settles, Sentinel 9 would control the HFP/CDO Fund assets? 10 A Which page are you on, sir? 11 Q Back to page 6. So if Highland were to 12 settle under the proposal that's being 13 contemplated in this document, Sentinel would then 14 control the HFP/CDO Fund assets referenced in -- 15 at least in Appendix 1? 16 A That's what this document says. 17 Q And the contemplation was that Sentinel 18 and Highland Capital Management could then use 19 those assets that had originated at HFP and 20 CDO Fund to generate cash to pay a UBS settlement, 21 a Citi settlement and outstanding legal fees, 22 correct? 23 A That is what this says. 24 Q And you have no reason to believe that you 25 had a different understanding than what was in</p>	<p style="text-align: right;">203</p> <p>1 again because the problem is we're so off base 2 that I'm being -- I'm confused as to how to answer 3 the question. 4 BY MR. CLUBOK: 5 Q Well, it's your document, so I'm asking -- 6 MS. SMITH: Objection, form. 7 BY MR. CLUBOK: 8 Q It's a document that you sent to 9 Mr. Sevilla, correct? 10 A It is a document that I attached to an 11 e-mail to Mr. Sevilla, yes. 12 Q And with no -- with no further 13 explanation, you just sent this document to 14 Mr. Sevilla? 15 A In Exhibit 47, I just sent the document to 16 Mr. Sevilla. 17 Q Okay. And you at one point in the 18 document -- at one point -- strike that. 19 At one point the document refers to 20 Dondero's tax liability as 50 million plus and 21 here it talks about HCMLP's \$50 million plus tax 22 liability. You see that? 23 A The document refers to Dondero's potential 24 tax liability of \$50 million plus and HCMLP's tax 25 liability of \$50 million plus.</p>
<p style="text-align: right;">202</p> <p>1 this document at the time, as you sit here today, 2 correct? 3 A I don't remember it so I don't remember if 4 I had a different belief or not at the time. 5 Q Okay. And then -- and then another 6 benefit is that it says HCMLP's \$50 million tax 7 liability would be avoided. Do you see that? 8 A It does. 9 Q It doesn't say Jim Dondero's \$50 million 10 plus tax liability. You see that? 11 A Yeah, I -- it doesn't, but I think you're 12 conflating two issues. 13 Q How so? 14 A Well, it's a limited partnership. So the 15 liability would be at HCMLP and it would flow 16 through to the limited partners. 17 Q But the only limited partners at HCM at 18 that time -- or the only significant limited 19 partners at HCM at that time were Jim Dondero and 20 Mark Okada, right? 21 MS. SMITH: Objection, form. 22 A First of all, I don't remember who the 23 significant limited partners were. I've already 24 told you that, depending on what time period it 25 is, but your -- I'm -- here, ask the question</p>	<p style="text-align: right;">204</p> <p>1 Q Right. And I guess if you go back to -- 2 A Oh, actually, I answered that question 3 wrong. There's going to be part of my testimony 4 I'll need to correct. 5 Q Sorry, what -- 6 A Because I messed up. 7 Q Go ahead and correct it now, then. As 8 they say, by the way, deposition testimony is not 9 a take home exam, so please correct it now if you 10 can. 11 A So whoever owned HCMLP would be completely 12 irrelevant to the tax liability. It's tax 13 liability associated with HFP, not HCMLP. 14 Q Right. It's owners of HFP? 15 A Right. But that means that ownership of 16 HCMLP is not relevant to this inquiry. 17 Q Unless you're treating the economic 18 interest of HCMLP interchangeably with Mr. Dondero 19 and a few other limited partners, correct? 20 MS. SMITH: Objection, form. 21 A That's -- no, that's completely incorrect, 22 sir. 23 BY MR. CLUBOK: 24 Q All right. Let's just continue with the 25 document here, though. It says: Residual assets</p>

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<p>1 (up to \$50 million) stay at Sentinel. 2 Do you see that? 3 A I do. 4 Q Now, that's residual assets after using 5 the assets to generate cash to pay the UBS 6 settlement. Do you see? 7 MS. SMITH: Objection, form. 8 A It is bullet point 3 below bullet point 2. 9 BY MR. CLUBOK: 10 Q Sorry, bullet point 4 below bullet 11 point 2? 12 A Yes, you're right, bullet point 4, below 13 bullet point 2. 14 Q And fair to say, then, that the 15 contemplation here is that the total settlements 16 in outstanding legal fees would total something 17 approximately \$44 million under what's being 18 contemplated on page 6 here? 19 MS. SMITH: Objection, form. 20 A That's not really accurate, sir. 21 BY MR. CLUBOK: 22 Q Why not? 23 A Because bullet point 4 says up to 24 \$50 million. 25 Q Up to 50 million. Okay. So it's</p>	<p>205</p> <p>207</p> <p>1 it be pretty curious to negotiate a settlement 2 amount and then buy an insurance policy if you 3 already know exactly what the settlement amount 4 is? 5 MS. SMITH: Objection. 6 BY MR. CLUBOK: 7 Q Doesn't that seem curious to you if it was 8 that way? 9 MS. SMITH: Objection, form. 10 BY MR. CLUBOK: 11 Q Instead of the way it's laid out here? 12 A Not necessarily, no. 13 Q Seems perfectly appropriate to you -- you 14 said before that ATE policies are standard issue 15 or something -- some comment like that. You 16 remember that? 17 A It's a matured industry. It's fairly 18 commonly used in a variety of different 19 jurisdictions. 20 Q And is it fairly commonly used after a 21 settlement amount has been negotiated to then come 22 up with an ATE policy to fund a known settlement 23 amount? 24 A I don't know. I don't know the ATE 25 industry that well to be able to say one way or</p>
<p>206</p> <p>1 contemplated that the total settlement of the 2 claims against UBS, Citi -- strike that. 3 It's contemplated the total settlement of 4 the claims brought by UBS and Citi along with 5 outstanding legal fees associated with those 6 claims would be at least \$40 million and -- plus 7 more, up to another \$50 million; is that fair? 8 A I -- I mean, I guess if that's how you 9 want to describe the document, sir. But since I 10 don't remember the document, I really have nothing 11 to add other than what's on the page. 12 Q So turning to page 8, it summarizes the 13 UBS Settlement: Structure Summary. Do you see 14 that? 15 A I do. 16 Q And Step 1 actually is that HFP and 17 CDO Fund buy the \$100 million ATE policy from 18 Sentinel. Do you see that? 19 A I do. 20 Q That's the very first thing contemplated 21 before even negotiating a settlement amount with 22 UBS, according to this document that you sent 23 Mr. Sevilla, right? 24 A That's correct. 25 Q And indeed if you think about it, wouldn't</p>	<p>208</p> <p>1 another, sir. 2 Q Well, you said under oath that it's 3 commonly used, or words to that effect, and my 4 question is do you really have any idea whether 5 it's commonly used in that way, specifically after 6 a settlement amount has been already negotiated? 7 A I don't know one way or another. 8 Q Do you know one way or the other whether 9 the way the ATE policy that was ultimately bought 10 in this case comports with the common use of ATE 11 policies the way you used that phrase earlier 12 today? 13 A I've never seen the ATE policy that was 14 executed in August 2017, so I don't know one way 15 or another. 16 Q Did you have access to that policy if you 17 had wanted to see it? 18 A I think I did at one point. 19 Q At what point? 20 A I think it was e-mailed to me at one 21 point. 22 Q Sorry, it was e-mailed to you? 23 A I think that's right. 24 Q You said you never had it. 25 A No, I said I never looked at it, sir.</p>

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<p style="text-align: right;">209</p> <p>1 There's a difference.</p> <p>2 Q It was e-mailed to you and you never --</p> <p>3 why was it e-mailed to you?</p> <p>4 A I don't recall. I would have to -- I</p> <p>5 would have to look. I don't remember.</p> <p>6 Q Did you just remember that it was e-mailed</p> <p>7 to you? Because I asked you many times earlier</p> <p>8 today if you ever saw the policy. When I asked</p> <p>9 you those questions, did you remember that it had</p> <p>10 been e-mailed to you but just didn't mention that?</p> <p>11 A I've never seen the policy, sir. That</p> <p>12 is -- that is true.</p> <p>13 Q Understood. But when I asked you those</p> <p>14 questions earlier today, did you remember that it</p> <p>15 was e-mailed to you, or did something since I</p> <p>16 asked those questions refresh your recollection?</p> <p>17 A I'd have to think about it. I'm sorry.</p> <p>18 Q I would like you to think about that. I</p> <p>19 asked you many times earlier in this deposition</p> <p>20 just within the last couple hours in many</p> <p>21 different ways whether you had ever seen the</p> <p>22 policy. What I'd like to know is when I was</p> <p>23 asking those questions and you were giving</p> <p>24 answers, did you know, like you just volunteered</p> <p>25 now, that it had been e-mailed to you or did</p>	<p style="text-align: right;">211</p> <p>1 had I seen it and I haven't, other than the page.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Has anything happened since I asked you</p> <p>4 those questions to refresh your recollection that</p> <p>5 you actually were e-mailed a copy of that policy?</p> <p>6 A I'd have to think about it. I don't know.</p> <p>7 Q I'm asking you that question.</p> <p>8 A I know and I'm thinking --</p> <p>9 Q It's only been about an hour. Did</p> <p>10 something happen since I asked those questions</p> <p>11 that refreshed your recollection that you actually</p> <p>12 had been e-mailed a copy of that policy; anything</p> <p>13 at all?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A I'd have to think about it, Mr. Clubok. I</p> <p>16 don't --</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Think about it.</p> <p>19 A Okay.</p> <p>20 Q Did anything happen since I asked you</p> <p>21 those questions to refresh your recollection that,</p> <p>22 in fact, you had been e-mailed a copy of that</p> <p>23 policy?</p> <p>24 A I'm not sure. I'd need to think about it</p> <p>25 further.</p>
<p style="text-align: right;">210</p> <p>1 something happen since I asked you those questions</p> <p>2 to refresh your recollection on that subject?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I'd have to think about it, Mr. Clubok.</p> <p>5 We could take a break, but I don't -- I don't</p> <p>6 know.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q I'd like you to think about it and give</p> <p>9 the answer. I've asked you a question. You don't</p> <p>10 take a break in between a question and answer, as</p> <p>11 you know.</p> <p>12 A Fair enough.</p> <p>13 Q So I asked you those questions earlier</p> <p>14 today about whether you'd ever seen the insurance</p> <p>15 policy and in a number of different ways you said</p> <p>16 absolutely not, except for the one page that was</p> <p>17 shown to you on the screen. And my question to</p> <p>18 you is, when I was asking you those questions, did</p> <p>19 you remember that it had been e-mailed to you even</p> <p>20 if you didn't look at it?</p> <p>21 A I don't --</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A I don't think that was something I was</p> <p>24 thinking about when you asked me those questions</p> <p>25 because I was answering the question you asked,</p>	<p style="text-align: right;">212</p> <p>1 Q Did your lawyer show you anything at all</p> <p>2 that refreshed your recollection?</p> <p>3 A No.</p> <p>4 Q Did your lawyer say anything to you in any</p> <p>5 way that refreshed your recollection?</p> <p>6 MS. SMITH: Objection, privileged.</p> <p>7 A I'm not going to talk about what my lawyer</p> <p>8 said to me.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Did you speak to anyone at all?</p> <p>11 A The only people I have conversed with</p> <p>12 today are my wife and my attorneys.</p> <p>13 Q Did you review anything in --</p> <p>14 A No, sir.</p> <p>15 Q And what caused you to suddenly remember</p> <p>16 and say that you had been e-mailed a copy of that</p> <p>17 policy?</p> <p>18 A I've given you my testimony, sir.</p> <p>19 Q What caused you to suddenly think of that;</p> <p>20 do you know? Or is your answer you have no idea?</p> <p>21 A I mean, I think my answer is that I have</p> <p>22 nothing to say that's not potentially subject to</p> <p>23 privilege.</p> <p>24 Q So there was something that occurred that</p> <p>25 caused you to refresh your recollection about</p>

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<p>213</p> <p>1 being e-mailed that document but you can't say 2 because of privilege; is that what you're saying? 3 MS. SMITH: Objection, form. 4 A I'm not going to -- I've given you my 5 testimony, sir. 6 BY MR. CLUBOK: 7 Q Why were you e-mailed a copy of the 8 policy? 9 A I don't recall. 10 MS. SMITH: Can we go off the record for 11 one second? 12 MR. CLUBOK: Sure. 13 THE VIDEOGRAPHER: Off the -- off the 14 record at 3:34 p.m. 15 (Recess taken from 3:34 p.m. CDT to 16 3:42 p.m. CDT) 17 THE VIDEOGRAPHER: The time is 3:42 p.m. 18 We are back on the record. 19 BY MR. CLUBOK: 20 Q So earlier today I asked you if you ever 21 tried to see a copy of the ATE policy in 22 connection with your work at Highland and you said 23 I never asked to see a copy of the ATE policy that 24 I recall. Do you remember that? 25 A Yes.</p>	<p>215</p> <p>1 previously marked as Exhibit 56. This is an 2 e-mail from you -- sorry, from JP Sevilla to you, 3 attaching the ATE policy in response to an e-mail 4 that you sent on October 25, 2017, at 3:23 p.m. 5 with the subject: UBS ATE Policy, and a note that 6 says: Will you please send me a copy of the final 7 executed insurance agreement? 8 Do you see that? 9 A I do. 10 Q Why did you ask Mr. Sevilla to send you a 11 copy of the final executed insurance agreement 12 that you called the UBS ATE policy? 13 A I don't recall. 14 Q Did you -- 15 MS. SMITH: Objection, form. 16 BY MR. CLUBOK: 17 Q Did you recall that you had asked for this 18 policy before I just showed you this document? 19 A Actually, I don't remember this e-mail at 20 all. 21 Q And what did you do when you got the 22 policy? You just got it and didn't look at it? 23 A Actually I don't even want to look at it 24 now. I haven't seen it before. 25 Q Well, I would like you to look at it, and</p>
<p>214</p> <p>1 Q And at the time I asked you that question, 2 were you thinking that you had asked to get a copy 3 of it but not to see a copy of it? Is that a 4 distinction you were drawing in your mind when you 5 answered that question? 6 A I don't think so. I was actually 7 answering the question that you asked, which was 8 did I ever ask to see a policy copy and I never 9 did. 10 Q And when I asked you that question did you 11 remember that you had asked for a copy of the 12 policy? 13 A When I was answering that question, I 14 don't believe so. I think I was answering the 15 question in front of me. 16 Q So what's caused you now -- by the way, 17 did you ever ask for a copy of the document? 18 A I don't recall, but if you'd like to show 19 me a document to refresh my recollection, I may 20 have. 21 Q Okay. So I earlier asked you if you had 22 access to it, you said you did have access. Did 23 you ever ask for a copy of the policy? 24 A I don't remember. 25 Q I'm going to hand you what's been</p>	<p>216</p> <p>1 you asked Mr. Sevilla for the policy, correct? 2 A That's what this appears to say, yes. 3 Q That's your e-mail to Mr. Sevilla, right? 4 A Yes. 5 Q ILeventon@HighlandCapital.com was you in 6 October 2017, right? 7 A Yes. 8 Q Okay. And let's look at the document. 9 Your testimony is that you got this -- you made a 10 point of asking Mr. Sevilla for it, you got it and 11 then you never looked at it? 12 A Correct. 13 Q Why? 14 A I don't remember, sir. 15 Q Why did you want it? 16 A I don't remember, sir. 17 Q What did you do with it? 18 A I don't remember, sir. 19 Q And you didn't even remember asking for it 20 until I just showed you this document, correct? 21 A I didn't remember asking Mr. Sevilla for 22 it, no. 23 Q Do you consider yourself to have a good 24 memory? 25 A You know, I literally send and received</p>

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<p>217</p> <p>1 probably 10,000 e-mails over this time period. I</p> <p>2 think I have a decent memory.</p> <p>3 Q You send and received 10,000 e-mails over</p> <p>4 what time period?</p> <p>5 A I mean, if you're talking about over a</p> <p>6 four-year period, five-year period, thousands of</p> <p>7 e-mails. I didn't remember this one.</p> <p>8 Q Did you read thousands of documents over</p> <p>9 that time period?</p> <p>10 A Possibly.</p> <p>11 Q So it's possible that you forgot you had</p> <p>12 read the ATE policy?</p> <p>13 A No. I am certain that the only part of</p> <p>14 the ATE policy I ever read was just the one page.</p> <p>15 Q Why? Why did you -- why did you refuse to</p> <p>16 read the policy?</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 A Refuse is not accurate.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q You obtained a copy of it, but you made a</p> <p>21 point of not looking at it or opening the</p> <p>22 document?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A That's not accurate, sir.</p> <p>25</p>	<p>219</p> <p>1 Q That's the entity that we often commonly</p> <p>2 referred to as CDO Fund in the UBS New York</p> <p>3 litigation, right?</p> <p>4 A I think that's right.</p> <p>5 Q And Mr. Dondero had authority to sign on</p> <p>6 behalf of CDO Fund at this time?</p> <p>7 A I suppose he did. It appears that he</p> <p>8 signed on behalf of that entity.</p> <p>9 Q And also on behalf of CDO Hold Co and</p> <p>10 SOHC, correct?</p> <p>11 A Appears that he signed on behalf of all of</p> <p>12 those entities, yes.</p> <p>13 Q And CDO Hold Co and SOHC were both subs of</p> <p>14 Highland Financial Partners, correct?</p> <p>15 A They were both owned by Highland Financial</p> <p>16 Partners, yes.</p> <p>17 Q Who negotiated this policy on behalf of</p> <p>18 CDO Opportunity Master Fund?</p> <p>19 A I don't know.</p> <p>20 Q Who negotiated this policy on behalf of</p> <p>21 Highland CDO Hold Co?</p> <p>22 A I have no idea.</p> <p>23 Q So who negotiated this policy on behalf of</p> <p>24 SOHC?</p> <p>25 A I don't know.</p>
<p>218</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q What's inaccurate about that statement?</p> <p>3 A I don't ever remember consciously thinking</p> <p>4 I better not look at this. I don't -- but I</p> <p>5 certainly know that I didn't look at it.</p> <p>6 Q Well, let's open it up and take a look at</p> <p>7 it. You certainly have looked at the page -- the</p> <p>8 last page of the legal liability insurance policy</p> <p>9 is the signature page. Do you see that?</p> <p>10 A I do.</p> <p>11 Q And do you see that it was signed on</p> <p>12 behalf of Sentinel Reinsurance by someone named</p> <p>13 Andrew Dean, director?</p> <p>14 A I see that, yes.</p> <p>15 Q Do you know who Andrew Dean is?</p> <p>16 A I don't.</p> <p>17 Q Do you know who negotiated the policy on</p> <p>18 behalf of Sentinel Reinsurance?</p> <p>19 A No, sir, I don't.</p> <p>20 Q Okay. Do you see there where it lists the</p> <p>21 insureds under the policy?</p> <p>22 A I do.</p> <p>23 Q And do you see it lists Highland CDO</p> <p>24 Opportunity Master Fund, LP?</p> <p>25 A Yes.</p>	<p>220</p> <p>1 Q You understood, though, that -- strike</p> <p>2 that.</p> <p>3 Was this the page you looked at on</p> <p>4 Mr. Sevilla's computer to tell you that the -- who</p> <p>5 the insureds were?</p> <p>6 A I don't think so, no.</p> <p>7 Q So flip back to page 17. It says page 17</p> <p>8 of 16. Do you see that? And I guess they ended</p> <p>9 the policy at 16 and then they added 17 and 18 on</p> <p>10 top.</p> <p>11 A Gosh.</p> <p>12 Q I don't know if that's --</p> <p>13 A Yeah.</p> <p>14 Q Or they added 17 and then they added a</p> <p>15 signature page that's 16 but with signatures. Do</p> <p>16 you see that?</p> <p>17 A I do.</p> <p>18 Q Maybe that's a Cayman convention. I don't</p> <p>19 know. I haven't seen that before.</p> <p>20 Is this schedule on what's marked as</p> <p>21 page 17 of 16, or Bates label ending in 90, 91 of</p> <p>22 Exhibit 56, is that the page that you looked at on</p> <p>23 Mr. Sevilla's computer?</p> <p>24 A It might have been.</p> <p>25 Q Certainly -- did you know that the ATE</p>

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<p style="text-align: right;">221</p> <p>1 policy was for \$100 million?</p> <p>2 A I don't think I did, no.</p> <p>3 Q Well, that matches up exactly with the</p> <p>4 settlement structure that you had proposed in</p> <p>5 which HFP and CDO Fund would buy a \$100 million</p> <p>6 ATE policy from Sentinel, right?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Strike that. Let me ask it again.</p> <p>10 In Exhibit 47, you passed on a settlement</p> <p>11 proposal that contemplated HFP and CDO Fund buying</p> <p>12 a \$100 million ATE policy from Sentinel. Do you</p> <p>13 see that?</p> <p>14 A Where are you, sir?</p> <p>15 Q Back to page 8.</p> <p>16 A Of which document?</p> <p>17 Q 47.</p> <p>18 A I see the page.</p> <p>19 Q And remember, Exhibit 47 was the</p> <p>20 settlement analysis that was conducted in April of</p> <p>21 2017 that you claimed was for an entirely separate</p> <p>22 transaction than the executed ATE policy, correct?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A Can you rephrase the question? I'm sorry,</p> <p>25 I got lost in all of the advocacy of that one.</p>	<p style="text-align: right;">223</p> <p>1 A The settlement proposal in April was</p> <p>2 different than the ATE policy purchased in August.</p> <p>3 Q I believe you said, in words or substance,</p> <p>4 the transaction contemplated in April of 2017 was</p> <p>5 entirely different than the purchased ATE policy</p> <p>6 in August of 2017?</p> <p>7 A What I'm --</p> <p>8 Q Is that correct?</p> <p>9 A What I'm testifying is to, sir, the</p> <p>10 contemplated settlement process, which is what's</p> <p>11 discussed in this document, is different than the</p> <p>12 ATE policy that was purchased in August of 2017.</p> <p>13 Q Okay. But part of that settlement process</p> <p>14 was the purchase of an ATE policy that was very</p> <p>15 close to what ultimately was purchased in August</p> <p>16 of 2017, correct?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A Honestly, I'm seeing this document -- the</p> <p>19 ATE policy for the first time.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Okay. So you have -- but in your proposal</p> <p>22 that was being considered in April of 2017, as</p> <p>23 part of it, it was HFP and CDO Fund would buy a</p> <p>24 \$100 million ATE policy from Sentinel, correct?</p> <p>25 MS. SMITH: Objection, form.</p>
<p style="text-align: right;">222</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q There was work done in April of 2017</p> <p>3 that's at least in part reflected by Exhibit 47,</p> <p>4 regarding a potential settlement structure with</p> <p>5 UBS, correct?</p> <p>6 A There was a potential settlement structure</p> <p>7 with UBS contemplated in April of 2017.</p> <p>8 Q And as part of that, there was a</p> <p>9 transaction that you've testified about today that</p> <p>10 was being considered, correct?</p> <p>11 A There is the consideration of purchasing</p> <p>12 an ATE policy.</p> <p>13 Q And you said, I'm paraphrasing, that the</p> <p>14 April proposed transaction or contemplated</p> <p>15 transaction was entirely different from what</p> <p>16 actually happened when an ATE policy was purchased</p> <p>17 in August of 2017, correct?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A Whatever my testimony was, it will speak</p> <p>20 for itself.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Am I getting the gist of your testimony</p> <p>23 correct, that you said the April proposed</p> <p>24 transaction was entirely different from the actual</p> <p>25 consummated August transaction?</p>	<p style="text-align: right;">224</p> <p>1 A The document states that HFP and CDO Fund</p> <p>2 would buy a \$100 million ATE policy from Sentinel</p> <p>3 as the first of what ultimately were seven steps</p> <p>4 in a settlement process.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Right. But the purchase of the policy</p> <p>7 would be from HFP and CDO Fund. Yes?</p> <p>8 A Yes.</p> <p>9 Q And it would be a \$100 million ATE policy</p> <p>10 from Sentinel Reinsurance, right?</p> <p>11 A From Sentinel, yes.</p> <p>12 Q And the premium would be all of the assets</p> <p>13 in HFP and CDO Fund, correct?</p> <p>14 A Right. That's what it says on the page.</p> <p>15 Q Okay. And what actually happened is --</p> <p>16 pursuant to the legal liability insurance policy</p> <p>17 that you asked for a copy of in October 25th,</p> <p>18 2017, is that Sentinel Reinsurance issued a policy</p> <p>19 to SOHC -- sorry, to CDO Fund and two subsidiaries</p> <p>20 of HFP, correct?</p> <p>21 A Which page are you on, sir?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q I'm on the schedule which is marked as</p> <p>25 page 17 of 16, that you believe you had reviewed</p>

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<p>225</p> <p>1 on Mr. Sevilla's computer, and it's fair to say 2 that there was a \$100 million ATE policy purchased 3 by HFP and CDO Fund from Sentinel in August of 4 2017? 5 MS. SMITH: Objection, form. 6 A To clarify my earlier testimony, the only 7 thing I did was I looked at who the insureds were 8 on this page. That's all I cared about. I don't 9 even remember looking at the rest of the page. 10 BY MR. CLUBOK: 11 Q You knew that the insureds were HFP and 12 CDO Fund, correct? 13 MS. SMITH: Objection, form. 14 A I apparently had to confirm that the 15 insureds were Highland CDO Opportunity Master 16 Fund, LP, Highland CDO Holding Company and 17 Highland Special Opportunities Holding Company. 18 That's why I looked at this page. 19 BY MR. CLUBOK: 20 Q Right. And that matches up with the 21 contemplation from your April document, that 22 shorthand, HFP/CDO fund would buy a \$100 million 23 ATE policy from Sentinel, correct? 24 MS. SMITH: Objection, form. 25 A I don't really know that it does, no.</p>	<p>227</p> <p>1 do you say that the transaction that was 2 contemplated in Step 1 of the UBS settlement 3 structure reflected in Exhibit 47 is totally 4 different than the actual ATE policy that was 5 purchased a couple months later? Is that your 6 testimony under oath, yes or no? 7 MS. SMITH: Objection, form. 8 A I can't give you that testimony one way or 9 another. I'm seeing that ATE policy for the first 10 time. 11 BY MR. CLUBOK: 12 Q Okay. So as you sit here today, fair to 13 say that you can't say how closely the actual ATE 14 policy matches up with what was contemplated as 15 part of the proposed UBS settlement structure 16 reflected in Exhibit 47; is that fair? 17 A I disagree with one of the premises of 18 your question, and I'm happy to explain. 19 Q Yeah. 20 A The April settlement proposal was a series 21 of steps, but they were all part of a single 22 proposal. I don't know that we can pull one of 23 them out and characterize it as something that 24 happened later or didn't happen later. It's a 25 single process with multiple steps.</p>
<p>226</p> <p>1 BY MR. CLUBOK: 2 Q You're sitting here -- now that you're 3 looking at these, you claim that the Step 1 4 HFP/CDO Fund buy a \$100 million ATE policy from 5 Sentinel, using all the assets in HFP and CDO Fund 6 doesn't match up with the actual purchase of a 7 \$100 million ATE policy from Sentinel as reflected 8 in Exhibit 56? 9 MS. SMITH: Objection, form. 10 A The documents speak for themselves. I'm 11 looking at one document I didn't even remember and 12 know that I've drafted and another document I've 13 never seen. 14 BY MR. CLUBOK: 15 Q Yeah. The documents do speak for 16 themselves. I want -- but I asked you for your 17 testimony earlier. And we have a record of what 18 you said. 19 A Okay. 20 Q And what you said about how separate these 21 transactions were. I'm not trying to quote the 22 exact words, but we've got pages of transcript 23 from earlier today about exactly what you said 24 under oath. 25 And my question now is, as you sit here,</p>	<p>228</p> <p>1 Q Okay. 2 MR. CLUBOK: I'm going to move to strike 3 as nonresponsive. 4 BY MR. CLUBOK: 5 Q I just want you to focus on my question 6 and please don't make points about things I'm not 7 asking you. 8 Step 1 of the proposed settlement 9 structure that is reflected in Exhibit 47 is 10 substantially similar as what actually occurred 11 with the purchase of the ATE policy in August. 12 True or not true, or you can't -- you don't know? 13 MS. SMITH: Objection, form. 14 A I'm just seeing the ATE policy for the 15 first time today and frankly haven't even had a 16 chance to review the whole document. And I also 17 wouldn't pull one step out of the April proposal 18 and characterize it. So I don't believe I can 19 answer your question as asked. 20 BY MR. CLUBOK: 21 Q The reason you can't answer -- I am asking 22 you, if you could, to compare Step 1, which says: 23 HFP/CDO Fund buy a \$100 million ATE policy from 24 Sentinel, using a premium of all the assets in 25 HFP/CDO Fund to what actually happens in August.</p>

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<p>229</p> <p>1 And I want to know if that -- what was 2 contemplated as Step 1 is substantially the same 3 as what occurred in August, or if you believe it 4 was not substantially the same or if you don't 5 know because you don't know enough about the 6 details of what happened in August to make that 7 comparison? That's the only question I'm asking 8 you. Can you please answer that question? 9 MS. SMITH: Objection, asked and answered. 10 A I've given you my testimony, sir. 11 BY MR. CLUBOK: 12 Q My question is, was Step 1, as 13 contemplated in Exhibit 47, substantially the same 14 as what actually occurred in August, or do you not 15 know about the -- enough about the August 16 transaction to say one way or the other? 17 A I've given you my -- 18 MS. SMITH: Objection, asked and answered. 19 A I've given you my testimony, sir. 20 BY MR. CLUBOK: 21 Q My question is, as con -- I have a right 22 to ask this question. This is cross-examination. 23 And I'm going to ask the Court for more time with 24 you if we don't get an answer to this question. 25 It's very simple, without saying you've answered</p>	<p>231</p> <p>1 doing what you're doing, which is just claim 2 you've answered a question instead of just 3 answering the question, even if you believe I've 4 asked it twice. I hope your attorneys -- 5 MS. SMITH: Objection. 6 BY MR. CLUBOK: 7 Q -- tell you not to do that but we're going 8 to move on and we'll reserve that. 9 A Let me give you a full answer. I disagree 10 with the premise of your question, sir, and I 11 cannot answer it as asked. 12 Q In August of 2017, did HFP and CDO Fund 13 buy a \$100 million ATE policy from Sentinel using 14 all of the assets in HFP and CDO Fund? 15 A I don't know. 16 Q Did anyone ever tell you whether or not 17 that occurred? 18 A I don't remember ever being told that. 19 Q Did you know that the purchase of the 20 ATE policy in 2017 was made using assets of HFP 21 and CDO Fund? 22 MS. SMITH: Objection, form. 23 A I don't think I can really answer the 24 question as asked. 25</p>
<p>230</p> <p>1 it. You just listen to my question and please try 2 to answer this question, regardless of whether you 3 believe you've answered this question or not. 4 Step 1, that's identified on page 8 of the 5 presentation attached as part of Exhibit 47, 6 describes the purchase of a \$100 million ATE 7 policy from Sentinel by HFP and CDO Fund using as 8 the premium all of the assets in HFP and CDO Fund. 9 And my question is, is that Step 1 the 10 same as what ultimately occurred substantially in 11 August of 2017, or do you believe it is not 12 substantially the same or do you not know enough 13 about the August transaction to answer that 14 particular question? 15 A My response to the question was that I did 16 not believe I could answer the question as phrased 17 and I gave you the reasons I did not believe I 18 could answer the question as phrased. That was my 19 testimony. And that is still my testimony in 20 response to the same question, sir. 21 MR. CLUBOK: Move to strike as 22 nonresponsive. We'll mark this document. 23 BY MR. CLUBOK: 24 Q We're going to call you back. It's not 25 acceptable to this court for any witness to keep</p>	<p>232</p> <p>1 BY MR. CLUBOK: 2 Q Why not? 3 A I didn't -- well, let me rephrase. I 4 didn't know what assets went over. 5 Q Did you believe -- you knew that there was 6 an ATE policy that had been purchased, right? 7 A Yes. 8 Q And you knew who the insureds were, right? 9 A Yes. 10 Q And did you know that some or all of the 11 purchase was made using assets from the CDO Fund 12 and HFP? 13 A I didn't know what the consideration was 14 for the policy. 15 Q You knew, though, that as of April 2017, 16 as part of the settlement structure laid out, the 17 contemplation was that the entire consideration 18 for the ATE policy that was being considered as 19 part of that analysis would come from HFP and 20 CDO Fund, correct? 21 MS. SMITH: Objection, form. 22 A What I was aware of was in April 2017, it 23 was contemplated that Sentinel and HMLP can use 24 HFP and CDO Fund assets to generate cash to pay 25 UBS, Citi and outstanding legal bills.</p>

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<p>233</p> <p>1 MR. CLUBOK: Move to strike as</p> <p>2 nonresponsive.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q You knew that in April 2017 as part of the</p> <p>5 settlement structure, Step 1 was the purchase of</p> <p>6 an ATE policy for HFP and CDO Fund with the entire</p> <p>7 consideration for that purchase coming from assets</p> <p>8 in HFP and CDO Fund, correct?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I can characterize what's on the page,</p> <p>11 which is HFP and CDO Fund would buy a \$100 million</p> <p>12 ATE policy from Sentinel and the ATE premium,</p> <p>13 apparently, was going to be all the assets in HFP</p> <p>14 and CDO Fund.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q And there's no other consideration that</p> <p>17 you're aware of that was being contemplated to pay</p> <p>18 for the ATE policy that was part of the proposal</p> <p>19 being discussed in April 2017, correct?</p> <p>20 A I don't remember --</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 THE WITNESS: Sorry.</p> <p>23 A I don't remember the proposal from</p> <p>24 April 2017, so I can't add or subtract from what's</p> <p>25 on the page.</p>	<p>235</p> <p>1 Okay. So please try hard to listen to my</p> <p>2 questions the rest of the way and just answer the</p> <p>3 questions I ask and not questions you decide to</p> <p>4 answer. Okay?</p> <p>5 MS. SMITH: Andy, I think this might be a</p> <p>6 good time for a break.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Do you need a break, Mr. Leventon?</p> <p>9 A I believe I do.</p> <p>10 Q Then we will take a break.</p> <p>11 THE VIDEOGRAPHER: We are off the record</p> <p>12 at 4:07 p.m.</p> <p>13 (Recess taken from 4:07 p.m. CDT to</p> <p>14 4:17 p.m. CDT)</p> <p>15 THE VIDEOGRAPHER: The time is 4:17 p.m.</p> <p>16 We are back on the record.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Sir, did you ever send the insurance</p> <p>19 policy to anybody?</p> <p>20 A I don't remember if I did or not.</p> <p>21 Q Who's Chris Dunn?</p> <p>22 A Chris was an accountant at Highland. I</p> <p>23 think a junior fund accountant.</p> <p>24 Q I'm going to hand you what's been marked</p> <p>25 as Exhibit 57. It's a cover e-mail from you</p>
<p>234</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q My -- please listen to my question. As</p> <p>3 you sit here today, you are not aware of any other</p> <p>4 consideration that was being contemplated to pay</p> <p>5 for the ATE policy that was being discussed in</p> <p>6 April 2017 other than the assets from the HFP and</p> <p>7 CDO Fund, correct?</p> <p>8 A Sitting here today, I don't remember one</p> <p>9 way or another, sir.</p> <p>10 Q So you are not aware of any other</p> <p>11 consideration that was being contemplated,</p> <p>12 correct?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q As you sit here today?</p> <p>16 A As I sit here today, yes.</p> <p>17 Q Okay.</p> <p>18 A Was I ever aware, I don't know.</p> <p>19 Q I didn't ask if you were ever aware. I'm</p> <p>20 going to ask you for the rest of this deposition,</p> <p>21 in order to avoid me needing to seek more time,</p> <p>22 that you please listen to the question I ask and</p> <p>23 answer the question I ask and not one that you</p> <p>24 make up. I didn't ask you if you ever were aware.</p> <p>25 I said as you sit here today, are you aware.</p>	<p>236</p> <p>1 attaching the UBS_ATE.PDF, dated October 26, 2017.</p> <p>2 Do you see that?</p> <p>3 A Hold on one moment, please. I do see</p> <p>4 that, yes.</p> <p>5 Q And this is an instance of you forwarding</p> <p>6 the UBS after-the-event policy to Chris Dunn on</p> <p>7 October 26, 2017, correct?</p> <p>8 A Yes.</p> <p>9 Q And you tell -- you don't -- you tell</p> <p>10 Mr. Dunn: Please label all communications related</p> <p>11 to this project as Privileged as all documents are</p> <p>12 being drafted at the request of the Legal Team.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q What documents did you request Mr. Dunn</p> <p>16 draft in connection with this ATE policy?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A I never requested Mr. Dunn draft any</p> <p>19 documents in connection with the ATE policy.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q What did you request Mr. Dunn do in</p> <p>22 connection with the ATE policy?</p> <p>23 A I don't recall. I don't recall if I</p> <p>24 requested him to do anything with it.</p> <p>25 Q Well, you talk about this project. You</p>

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<p>237</p> <p>1 refer to this project. Do you see?</p> <p>2 A I do.</p> <p>3 Q What's this project that you're referring</p> <p>4 to?</p> <p>5 A I mean, I can speculate, but I don't</p> <p>6 recall.</p> <p>7 Q Give your best educated guess.</p> <p>8 A Something having to do with the UBS</p> <p>9 ATE policy.</p> <p>10 Q You know nothing beyond that?</p> <p>11 A I don't.</p> <p>12 Q Do you have any educated assumption about</p> <p>13 what this was beyond that it had something to do</p> <p>14 with the UBS ATE policy?</p> <p>15 A When you say this, you're talking about</p> <p>16 the e-mail to Mr. Dunn?</p> <p>17 Q I'm talking about the project you</p> <p>18 reference, as if he knows what you're talking</p> <p>19 about when you send this policy to Mr. Dunn.</p> <p>20 A I mean, I don't have a recollection, I</p> <p>21 guess. I'm trying to figure out if I have an</p> <p>22 educated guess. I mean, there were a number of</p> <p>23 things that that could have referenced.</p> <p>24 Q Mr. Leventon, in the course of this</p> <p>25 deposition, you understand you have an obligation</p>	<p>239</p> <p>1 you also understand that you have to</p> <p>2 affirmatively -- do you believe when you're</p> <p>3 answering these questions, I just want to</p> <p>4 understand what your -- your process when you're</p> <p>5 answering questions, do you believe you have an</p> <p>6 obligation not to omit intentionally information</p> <p>7 that is necessary to make the statements you say</p> <p>8 fully true?</p> <p>9 A I mean, I answer the questions fully and</p> <p>10 truthfully. That's what I can say, sir.</p> <p>11 Q Yeah. My question is in the -- when you</p> <p>12 do that, do you believe, as you sit here today,</p> <p>13 that you have an obligation not to omit</p> <p>14 information that's necessary to make a statement</p> <p>15 that you have made fully true?</p> <p>16 MS. SMITH: Objection. You've already</p> <p>17 asked him that and he's answered. You're</p> <p>18 badgering him now.</p> <p>19 MR. CLUBOK: The record's going to show</p> <p>20 he's not answered this question and I think it's</p> <p>21 an important question for the judge to know and I</p> <p>22 think it's a perfectly fair --</p> <p>23 MS. SMITH: You're testifying now.</p> <p>24 MR. CLUBOK: So are you. We're not</p> <p>25 supposed to -- you should limit yourself to</p>
<p>238</p> <p>1 to affirmatively tell the truth, right?</p> <p>2 A Yes.</p> <p>3 Q Do you understand as part of that</p> <p>4 obligation, you also can't intentionally omit</p> <p>5 information that is necessary to make a statement</p> <p>6 you're saying the complete truth?</p> <p>7 MS. SMITH: Objection.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Do you have that understanding?</p> <p>10 MS. SMITH: Objection.</p> <p>11 A I'm going to testify fully and truthfully</p> <p>12 to the best of my ability.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q When you're answering questions in this</p> <p>15 deposition, do you understand that you have an</p> <p>16 obligation not to omit information that is</p> <p>17 necessary to make statements you are making true?</p> <p>18 MS. SMITH: Objection. Mr. Clubok, you're</p> <p>19 badgering him now.</p> <p>20 A I'll accept my counsel's instructions on</p> <p>21 how to conduct a deposition.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q I'm asking your understanding of when</p> <p>24 you're trying to answer these questions, you know</p> <p>25 that you're not supposed to affirmatively lie. Do</p>	<p>240</p> <p>1 objection to form and I should limit myself, so</p> <p>2 I'm going to ask my question again and I'm going</p> <p>3 to try not to take the bait of this argument. I</p> <p>4 agree with you, it's inappropriate.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Mr. Leventon, when you are answering these</p> <p>7 questions, do you believe you have an obligation</p> <p>8 not to intentionally omit material information</p> <p>9 that's necessary to make one of your answers</p> <p>10 completely truthful?</p> <p>11 A I have to fully and truthfully answer a</p> <p>12 question, but I am not obligated to answer a</p> <p>13 question I haven't been asked, is my understanding</p> <p>14 of the rules.</p> <p>15 Q And do you believe you're allowed to</p> <p>16 intentionally omit material information that might</p> <p>17 be necessary to make an answer you give completely</p> <p>18 true?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Yes or no?</p> <p>22 A I'm not allowed to omit information that</p> <p>23 would make an answer to a question asked true, but</p> <p>24 I don't believe I have an obligation to educate</p> <p>25 the questioning lawyer with respect to questions</p>

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<p>241</p> <p>1 they haven't asked.</p> <p>2 Q Okay. So with respect to this e-mail that</p> <p>3 relates -- that references this project, do you</p> <p>4 know anything else at all about what this project</p> <p>5 may have been other than it relates somehow to the</p> <p>6 UBS after-the-event policy that was purchased by</p> <p>7 HFP and CDO Fund?</p> <p>8 A My answer previously was that I don't</p> <p>9 recall, but that I was prepared to give my</p> <p>10 educated guess.</p> <p>11 Q Okay. And that guess is?</p> <p>12 A It had something to do with the audits</p> <p>13 being run by the accounting team, where you would</p> <p>14 do some sort of risk analysis, potentially, in</p> <p>15 order to determine if something goes into an audit</p> <p>16 or not.</p> <p>17 Q When did you first become aware of</p> <p>18 Sentinel Reinsurance?</p> <p>19 A I knew there was a reinsurance company in</p> <p>20 the Cayman Islands in 2013 sometime, but I don't</p> <p>21 recall if I knew the name or not.</p> <p>22 Q Did you know who owned Sentinel when you</p> <p>23 were talking about potentially having CDO Fund and</p> <p>24 HFP buy an ATE policy in April of 2017?</p> <p>25 A I mean, I knew it was somehow associated</p>	<p>243</p> <p>1 about it directly or was told by somebody that</p> <p>2 that was his determination.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I'm going to hand you what's been marked</p> <p>5 as Exhibit 61. It's an e-mail chain, the top one</p> <p>6 being an e-mail from Scott Ellington to you</p> <p>7 copying JP Sevilla. Here's a color version if it</p> <p>8 helps you. That's the official marked one, but</p> <p>9 there's a color version if --</p> <p>10 A I'm going to put the marked version into</p> <p>11 the pile and I'm going to look at the color</p> <p>12 version.</p> <p>13 Q This is the last few pages of that.</p> <p>14 A Is this --</p> <p>15 MS. SMITH: Shannon, could I have a copy</p> <p>16 of the color version also?</p> <p>17 MR. CLUBOK: I'm going to suggest that we</p> <p>18 agree that we can swap in the color version for</p> <p>19 Exhibit 61 if that's okay with you? Is that all</p> <p>20 right, Ms. Smith?</p> <p>21 MS. SMITH: That works for me. Well, I</p> <p>22 can't tell if it's the same.</p> <p>23 MR. CLUBOK: It's the same. We're</p> <p>24 representing it's the same. We printed it out</p> <p>25 with a color copier instead of the black-and-white</p>
<p>242</p> <p>1 with Mr. Dondero and Mr. Ellington, but I didn't</p> <p>2 know who owned it.</p> <p>3 Q Did you know that those two had beneficial</p> <p>4 economic interests in Sentinel?</p> <p>5 A I don't know -- I didn't know that then</p> <p>6 and I don't believe I know that now.</p> <p>7 Q You were never provided any information</p> <p>8 showing the beneficial ownership of Sentinel</p> <p>9 during that time frame; is that what you're</p> <p>10 testifying to?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A I don't recall ever seeing the beneficial</p> <p>13 ownership of Sentinel.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Did you know that -- did you ever come to</p> <p>16 believe that Sentinel was an affiliated investor?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A It would have been whatever Mr. Surgent</p> <p>19 and the compliance department determined and I</p> <p>20 believe his determination is that it wasn't an</p> <p>21 affiliated investor.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Why?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 A Because I believe I either spoke to him</p>	<p>244</p> <p>1 version we had yesterday.</p> <p>2 MS. SMITH: Okay.</p> <p>3 MR. CLUBOK: So we'll work on that with</p> <p>4 the court reporter to --</p> <p>5 MS. SMITH: So you're tossing the old --</p> <p>6 (Simultaneous discussion interrupted by</p> <p>7 reporter.)</p> <p>8 MR. CLUBOK: We'll do that off the record</p> <p>9 at the end to replace the version 61 that's in</p> <p>10 black and white with a color version.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q And we've got a color version for</p> <p>13 Mr. Leventon in front of him just for ease of use.</p> <p>14 Do you see that there was a file that was</p> <p>15 circulated amongst a number of people, with</p> <p>16 Sentinel being presented as an affiliated investor</p> <p>17 in Multi Strat. Do you see that?</p> <p>18 A I'm sorry, say that one more time, please.</p> <p>19 Q There is a document that was being</p> <p>20 circulated in December of 2017, and on the first</p> <p>21 page it identifies Sentinel (from Highland</p> <p>22 CDO Fund) as an affiliated investor in what was</p> <p>23 called Credit Opps and later became known as</p> <p>24 Multi Strat.</p> <p>25 MS. SMITH: Objection, form.</p>

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<p style="text-align: right;">245</p> <p>1 A I see on Bates number 020562 toward the 2 bottom, an e-mail from Mr. Taylor Colbert to Trey 3 Parker, copying a bunch of people, stating: As 4 discussed, please see the updated file with 5 Sentinel being presented as an affiliated 6 investor. 7 BY MR. CLUBOK: 8 Q And if you look at the attachment, the 9 first page, you can see where it identifies 10 Credit Opps Investors by NAV, Sentinel Re Holdings 11 is included, along with the others that are not 12 shaded to reflect being affiliated investors. 13 MS. SMITH: Objection, form. 14 BY MR. CLUBOK: 15 Q Do you see that? 16 A Sorry, sir, give me a moment, please. 17 This isn't completely straightforward. 18 (Witness reviews document.) 19 A Okay. I see that there's nothing on 20 nonaffiliated master for Sentinel Re Holdings, 21 Ltd. 22 BY MR. CLUBOK: 23 Q What? 24 A On one, two, three, four -- fifth column 25 over, top of the first page on the attachment,</p>	<p style="text-align: right;">247</p> <p>1 Q Okay. So as I said, this document gets 2 forwarded apparently to Mr. Surgent, who in turn 3 forwards it to Scott Ellington with a statement, 4 let's discuss. Do you see that? 5 A I guess that's right. 6 Q And -- 7 A Maybe. 8 Q -- Mr. Ellington in turn forwards it to 9 you and JP Sevilla and says: See below and 10 attached and please call me tomorrow on this, from 11 his iPhone. Do you see that? 12 A I do. 13 Q Do you remember him calling you about 14 this? 15 A No, I do not. 16 MS. SMITH: Objection, form. 17 MR. CLUBOK: What is the objection form on 18 that question? 19 MS. SMITH: This says please call me 20 tomorrow on this and you asked do you remember if 21 he called you. 22 MR. CLUBOK: Right. What is the form 23 objection? 24 MS. SMITH: I thought you were asking it 25 backwards.</p>
<p style="text-align: right;">246</p> <p>1 it -- there are percentages of non-affiliated 2 master and it does not have an entry for Sentinel. 3 Q Right. So Sentinel is identified as 4 having some interest in the master and some 5 interest in the offshore, and like other entities, 6 for example, HCMLP and Mark Okada and Dugaboy, 7 they are listed as being affiliated as opposed to 8 non-affiliated in connection with Credit Opps, 9 correct? 10 MS. SMITH: Objection, form. 11 A I think that's probably fair, yes. 12 BY MR. CLUBOK: 13 Q And this document gets forwarded to 14 Thomas Surgent who in turn forwards this to Scott 15 Ellington saying, let's discuss. Do you see that? 16 A I don't mean to quibble with you, but 17 Mr. Surgent appears to have been one of the 18 initial people copied on Mr. Colbert's e-mail at 19 5:50 p.m. on December 1 and then Mr. Surgent 20 forwards that to Mr. Ellington. 21 Q Okay. If you look down to Mr. Colbert's 22 original e-mail December 1st, 2017, Mr. Surgent is 23 not copied, correct? 24 A I'm looking at this for the first time and 25 that apparently is correct.</p>	<p style="text-align: right;">248</p> <p>1 MR. CLUBOK: Okay. 2 BY MR. CLUBOK: 3 Q Do you remember Mr. Ellington calling you 4 about this? 5 A No. 6 Q Do you remember ever discussing 7 Multi Strat's cash projections on or about 8 December of 2017? 9 A No. 10 Q Do you recall ever discussing whether 11 Sentinel was an affiliated investor in connection 12 with its investment of Multi Strat in December of 13 2017? 14 A I don't specifically recall December 2017, 15 but I do know that at some point the compliance 16 department via Mr. Surgent made the determination 17 that it was not an affiliated investor. 18 Q Why do you know that? 19 A I believe my testimony was I either -- I 20 don't remember if I spoke to Mr. Surgent about it 21 directly or heard from somebody indirectly that 22 that had been Mr. Surgent's determination. 23 Q And do you know the basis that that 24 determination was supposedly made on? 25 A I don't. It would be the purview of the</p>

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<p>249</p> <p>1 compliance department to make those calls.</p> <p>2 Q Do you see on the attachment where it says</p> <p>3 Sentinel (from Highland CDO Fund)? Do you see</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q And fair to say that the interest in</p> <p>7 Sentinel had been owned by CDO Fund prior to the</p> <p>8 purchase of the ATE policy?</p> <p>9 A I'm sorry, can you say that one more time,</p> <p>10 please?</p> <p>11 Q Yeah. The interest that's referenced here</p> <p>12 from Sentinel had been an interest that was owned</p> <p>13 by the Highland CDO Fund until the purchase of the</p> <p>14 ATE policy in August of 2017?</p> <p>15 A I don't actually know what assets were</p> <p>16 involved in that ATE policy, but it would -- it</p> <p>17 would be a fair assumption.</p> <p>18 Q You certainly know that there was assets</p> <p>19 in Sentinel that were being held by CDO Fund when</p> <p>20 you were doing your April 2017 analysis, correct?</p> <p>21 A Say that one more time, please.</p> <p>22 Q You knew that in April of 2017, when you</p> <p>23 were doing the analysis about a transaction that</p> <p>24 included the purchase of an ATE policy from</p> <p>25 Sentinel, that at that time CDO Fund had an</p>	<p>251</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q So in April of 2017, you know that</p> <p>3 CDO Fund had ownership interest in the entity that</p> <p>4 was then called Credit Opps that later became</p> <p>5 known as Multi Strat, correct?</p> <p>6 A I certainly had this schedule. I don't</p> <p>7 remember focusing on it particularly, but I know I</p> <p>8 had it.</p> <p>9 Q Okay. And you know that by the end of the</p> <p>10 year, CDO Funds' interest in Credit</p> <p>11 Opportunities/Multi Strat came to be owned by</p> <p>12 Sentinel pursuant to this schedule attached to</p> <p>13 Exhibit 61, correct?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A Hold on. This is the -- that was in the</p> <p>16 attachment that was sent to me.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q So that's a yes?</p> <p>19 A I'm not meaning to quibble about -- I know</p> <p>20 I received these documents. I have no dispute</p> <p>21 about that. I just don't have a recollection of</p> <p>22 looking at them, comparing them and noticing that</p> <p>23 particular point, as we're doing today.</p> <p>24 Q Okay. But you were provided information,</p> <p>25 whether you studied it or not, by the end of 2017</p>
<p>250</p> <p>1 interest in Credit Opportunities which later</p> <p>2 became known as Multi Strat, correct?</p> <p>3 A I saw the e-mail that showed that schedule</p> <p>4 of assets, and I think Multi Strat is on there,</p> <p>5 but I don't have an independent recollection of</p> <p>6 that ownership.</p> <p>7 Q Right. But Exhibit 67 --</p> <p>8 A Hold on one second, please. Hold on. I</p> <p>9 don't have --</p> <p>10 Q Exhibit 67 is a one-page document.</p> <p>11 A Sorry, I don't have Exhibit 67 in front of</p> <p>12 me for some reason.</p> <p>13 Q Well, Exhibit 67 is a one-page document</p> <p>14 that was Appendix 1 --</p> <p>15 A Sorry, it got attached. I found it.</p> <p>16 Q If you look at the second page of</p> <p>17 Exhibit 67, these were assets that were being held</p> <p>18 by CDO Fund and HFP that had been identified to</p> <p>19 you in April of 2017 when it was contemplated that</p> <p>20 these assets could be used to purchase an</p> <p>21 ATE policy from Sentinel, correct?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A Yes. And as I told you after looking at</p> <p>24 this document, it appears that the Highland Credit</p> <p>25 Opportunities CDO Ltd./LP units are on here.</p>	<p>252</p> <p>1 that showed that the interest CDO Fund had had in</p> <p>2 Credit Opportunities/Multi Strat from earlier in</p> <p>3 the year had now come to be owned by Sentinel,</p> <p>4 correct?</p> <p>5 A That's what this line says for the</p> <p>6 offshore feeder.</p> <p>7 Q And that's a line in a document that was</p> <p>8 provided to you by the end of the year 2017,</p> <p>9 correct?</p> <p>10 A I mean, now that I'm comparing these for</p> <p>11 the first time, I mean, this is a -- they don't</p> <p>12 match. They don't match.</p> <p>13 Q Right. The dollar amounts don't match</p> <p>14 exactly.</p> <p>15 A No, the entities don't match.</p> <p>16 Q Oh, the entities don't match.</p> <p>17 A No. The entities don't match.</p> <p>18 Q Oh. Are you claiming that the interest</p> <p>19 that Credit Opps/Multi Strat had in Sentinel did</p> <p>20 not come from CDO Fund?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I'm not saying that, sir. I'm making an</p> <p>23 observation of fact that Highland Credit</p> <p>24 Opportunities Fund, Ltd., on Exhibit --</p> <p>25 whatever -- 61, is a different entity than</p>

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<p>253</p> <p>1 Highland Credit Opportunities CDO, Ltd., which was 2 colloquially known as the MVCDO and was a wholly 3 owned subsidiary of the master fund and they don't 4 match. 5 BY MR. CLUBOK: 6 Q Sir -- 7 A I'm not making a dispute about 8 transactions. I'm pointing out -- I mean as you 9 pointed out to me that there was a math error, I'm 10 pointing out to you there's an error. 11 Q Well, there may or may not be an error in 12 the names used, but fair to say that you knew in 13 April of 2017 that CDO Fund had roughly 14 \$24 million of LP units in what was then known as 15 Credit Strategies, correct? 16 A In some level of Credit Strategies, but 17 they're not matching up, correct. 18 Q Okay. And you also received 19 information -- you also -- strike that -- knew 20 that there was a plan being proposed in April that 21 would have had an ATE policy with a \$100 million 22 face value purchased by CDO Fund and HFP for all 23 of the assets in those two funds from Sentinel, 24 correct? 25 MS. SMITH: Objection, form.</p>	<p>255</p> <p>1 owned an interest in Multi Strat but that it had 2 been transferred to Sentinel? 3 MS. SMITH: Objection to form. 4 A We discussed that they had at one point 5 owned an interest in Multi Strat, but I don't -- 6 there was a problem with that interest. 7 BY MR. CLUBOK: 8 Q What did you say specifically -- well, 9 first of all, who's the we in that sentence? 10 A Sorry, if you'll read my testimony back. 11 Q You said we discussed. 12 A Mr. -- oh, gosh. It was either me and 13 Mr. Demo or me and Mr. Seery. I think it was me 14 and Mr. Demo. 15 Q You and Mr. Demo discussed what on this 16 subject? 17 A That there had been -- that there had been 18 an interest in the Credit Opportunities fund 19 structure or fund entities that had been owned by 20 CDO Fund. 21 Q And did you ever in any way, to Mr. Demo 22 or Mr. Seery or any other lawyer for the debtor or 23 independent director, convey that that interest 24 that CDO Fund had had in Multi Strat was 25 transferred to Sentinel?</p>
<p>254</p> <p>1 A I was aware that what was in that 2 presentation is what was in the presentation, that 3 it was a \$100 million ATE policy, I believe, in 4 exchange for all the assets. Whatever it says 5 there is the answer. 6 BY MR. CLUBOK: 7 Q And then you were advised at the end of 8 December -- strike that. 9 You were advised at the end of 2017 that 10 Sentinel (from Highland CDO Fund) had some 11 interest in one of the Credit Opportunities funds, 12 correct? 13 A I was advised that Sentinel had -- well, I 14 don't know advised. I was sent a document that 15 included a lot of information, but amongst it 16 included the line that there was 28 million in 17 offshore NAV that was transferred to Sentinel from 18 Highland CDO Fund. 19 Q Okay. And did you ever follow up on that 20 issue with anyone at any time after that? 21 A I don't recall if I did, and the 22 determination as to what was or wasn't an 23 affiliate was not my decision or purview. 24 Q Did you ever tell Mr. Seery or anyone else 25 affiliated with the debtor, that CDO Fund had once</p>	<p>256</p> <p>1 A Yes. 2 Q When did you tell them that? 3 A Mr. Sargent was at all times aware of 4 that. He had been intimately involved in the 5 transaction and he was deputy general counsel for 6 the debtor and senior to me in the legal team. I 7 technically reported to Mr. Ellington, but 8 Mr. Sargent often would task me with things as 9 well and I had to follow his instructions. 10 Q Sorry, let's set aside Mr. Sargent for the 11 moment. Did you ever tell Mr. Demo or any other 12 lawyer at the Pachulski law firm, that the 13 interest that CDO Fund had had in Multi Strat was 14 transferred to Sentinel? 15 A I believe what I told Mr. Demo was that I 16 wasn't sure what happened to that interest. 17 Q But, in fact, you knew that that interest 18 had been transferred to Sentinel pursuant to this 19 document that we've just reviewed, correct? 20 MS. SMITH: Objection, form. 21 A Actually based on the discrepancy I just 22 showed you, which actually was something I 23 originally became aware of back in August of 2020 24 or maybe September, I don't actually know that 25 that was an effective transfer.</p>

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<p>257</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q You don't know if there actually has been</p> <p>3 an effective transfer from CDO Fund to Sentinel;</p> <p>4 is that correct?</p> <p>5 A Well, it -- the problem is --</p> <p>6 Q I just want an answer to my question. As</p> <p>7 you sit here today, you don't know if there</p> <p>8 actually has been an effective transfer of CDO's</p> <p>9 interest in Multi Strat to Sentinel, correct?</p> <p>10 A The answer is I don't know and I also</p> <p>11 think that that question assumes certain facts</p> <p>12 that I can't confirm or agree with.</p> <p>13 Q Like what?</p> <p>14 A Like the problem I ran into was if you</p> <p>15 have an accounting entry that shows that a fund</p> <p>16 owns -- let's just round it -- we'll call it</p> <p>17 24 million; is that fair? We'll just call the</p> <p>18 CDO Fund interest that --</p> <p>19 Q For purpose of this discussion you can</p> <p>20 call it 24 million for ease of --</p> <p>21 A Okay.</p> <p>22 Q Whether it's 24 or 28.</p> <p>23 A Twenty-four or 28, I'm not --</p> <p>24 (Simultaneous discussion interrupted by</p> <p>25 reporter.)</p>	<p>259</p> <p>1 you're saying?</p> <p>2 A It may or may not.</p> <p>3 Q Okay.</p> <p>4 A But it -- that interest may not exist, is</p> <p>5 another possibility.</p> <p>6 Q Okay. And then -- and you identified this</p> <p>7 issue at some point?</p> <p>8 A Yes, absolutely.</p> <p>9 Q While you were still working for the</p> <p>10 debtor?</p> <p>11 A Yes.</p> <p>12 Q And did you fully describe this issue to</p> <p>13 Mr. Demo or another lawyer at the Pachulski firm?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A I discussed this at length with Mr. Demo.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q And did you explain to Mr. Demo that there</p> <p>18 had been -- when you say discussed it at length,</p> <p>19 did you ever, in words or substance, say something</p> <p>20 that reflected that there was some effort, whether</p> <p>21 or not it had been successful, to transfer</p> <p>22 interest in Credit Strat from Highland CDO Fund to</p> <p>23 Sentinel?</p> <p>24 A We discussed --</p> <p>25 Q That's a yes-or-no question.</p>
<p>258</p> <p>1 A So if you have one accounting sheet that</p> <p>2 shows one asset and one accounting sheet that</p> <p>3 shows that after it was transferred it's a</p> <p>4 completely different asset, then you have a</p> <p>5 problem. Which then raises the question, did you</p> <p>6 own what you think you owned and did you actually</p> <p>7 transfer something you owned? I mean, it's kind</p> <p>8 of like -- it's like any other security that would</p> <p>9 be issued. Like if you own shares of UBS</p> <p>10 Securities USA, LLC, and then you sell them and</p> <p>11 someone on their balance sheet reflects US AG</p> <p>12 stock, then what just happened?</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q I see. And, in fact, for example, you</p> <p>15 know that -- you -- based on the analysis you did,</p> <p>16 you determined that CDO Fund still has ownership</p> <p>17 of an entity that's been loosely called</p> <p>18 Greenbriar, perhaps because of a faulty</p> <p>19 transaction?</p> <p>20 A That is a different situation.</p> <p>21 Q Okay. With respect to CDO Fund and</p> <p>22 Multi Strat, you believe that CDO Fund may still</p> <p>23 retain whatever interest it had in Multi Strat</p> <p>24 that you were aware of in April of 2017 because of</p> <p>25 perhaps an incorrect book entry; is that what</p>	<p>260</p> <p>1 A The issue of Sentinel did not come up in</p> <p>2 our conversations.</p> <p>3 Q So when you claim that you discussed at</p> <p>4 length this potential problem with identifying</p> <p>5 whether CDO Fund, in fact, owned an interest in</p> <p>6 Multi Strat, you never thought to raise the issue</p> <p>7 of whether or not CDO Fund had effectuated a</p> <p>8 proper transfer of that interest if it had one, to</p> <p>9 Sentinel, correct?</p> <p>10 A I got stuck in an earlier stage in the</p> <p>11 analysis and so Sentinel didn't come up.</p> <p>12 Q You never raised it affirmatively,</p> <p>13 correct?</p> <p>14 A We never got to that point in the inquiry.</p> <p>15 So no.</p> <p>16 Q You never mentioned that in order to</p> <p>17 figure out what interest, if any, CDO Fund had in</p> <p>18 Multi Strat, you might need to look at Sentinel's</p> <p>19 books, correct?</p> <p>20 A No, I wouldn't care what Sentinel's books</p> <p>21 said.</p> <p>22 Q You never mentioned that in order to</p> <p>23 figure out what interest, if any, CDO Fund had in</p> <p>24 Multi Strat, you might need to look at what</p> <p>25 Highland's books reflected in terms of transfers</p>

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<p>1 from Highland CDO Fund to Sentinel, correct?</p> <p>2 A We didn't say Sentinel in particular, but</p> <p>3 we did talk about any transfers, yes.</p> <p>4 Q But you definitely didn't say Sentinel,</p> <p>5 which was the transfer that you were aware at</p> <p>6 least had been contemplated and at least in one</p> <p>7 place reflected as having had occurred?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q I'll break that up into two questions.</p> <p>11 You knew that it was contemplated that</p> <p>12 there would be a transfer of CDO Fund's interest</p> <p>13 in Credit Strat to Sentinel, but you never</p> <p>14 affirmatively raised that with Mr. Demo or any</p> <p>15 other lawyer at Pachulski, correct?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I don't remember being aware of that at</p> <p>18 the time and it wasn't pertinent to the task that</p> <p>19 I was working on, which was the asset trade.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Sir, you knew that it had been</p> <p>22 contemplated based on the work you did in April of</p> <p>23 2017, that to purchase an ATE policy, CDO Fund</p> <p>24 might use as part of the consideration whatever</p> <p>25 interest it had in Multi Strat, correct?</p>	<p>263</p> <p>1 Q And you knew that there was a schedule</p> <p>2 that showed Sentinel having interest in</p> <p>3 Multi Strat (from Highland CDO Fund), correct?</p> <p>4 A In December I think that's fair -- sorry,</p> <p>5 December 2017. I think that's fair.</p> <p>6 Q And you even -- when you were tasked with</p> <p>7 helping trace the assets of CDO Fund and HFP, you</p> <p>8 even talked to Mr. Ellington, in words or</p> <p>9 substance, about whether or not you should mention</p> <p>10 Sentinel, correct?</p> <p>11 A Correct.</p> <p>12 Q And you never did once mention Sentinel to</p> <p>13 anyone at the Pachulski law firm in the course of</p> <p>14 doing the task you were given with respect to</p> <p>15 tracing the assets of CDO Fund and SOHC, correct?</p> <p>16 Correct?</p> <p>17 A It was not relevant to the task, so, no, I</p> <p>18 didn't.</p> <p>19 Q I'm going to hand you what's been marked</p> <p>20 as Deposition Exhibit No. 2. I don't want you to</p> <p>21 spend time reading it. I just want to -- in fact,</p> <p>22 before I hand it to you, I just want to ask you.</p> <p>23 Did you know there was a purchase agreement that</p> <p>24 was executed on or about the same time as the</p> <p>25 ATE policy was executed?</p>
<p>262</p> <p>1 A I can affirmatively state that in August</p> <p>2 of 2020, I was not thinking about an e-mail from</p> <p>3 April of 2017.</p> <p>4 MR. CLUBOK: Move to strike as</p> <p>5 nonresponsive.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q I didn't ask you that. I just said you</p> <p>8 knew based on the work you had done in April 2017,</p> <p>9 that CDO Fund had been contemplating using its</p> <p>10 interest in Multi Strat to partially fund the</p> <p>11 purchase of an ATE policy, correct?</p> <p>12 A Sir, it was one of many assets on a</p> <p>13 schedule, and I just don't remember thinking about</p> <p>14 that asset in -- I don't remember thinking of that</p> <p>15 asset from that schedule in April of 2017 back</p> <p>16 in -- whenever we were, August of 2020.</p> <p>17 Q You knew it was contemplated that CDO Fund</p> <p>18 would transfer all of its assets to Sentinel as</p> <p>19 part of the consideration for what was then</p> <p>20 contemplated to be an ATE policy. You knew that</p> <p>21 for sure, right?</p> <p>22 A Apparently in April 2017, I did, yes.</p> <p>23 Q And you knew that there had been an</p> <p>24 ATE policy purchased, correct?</p> <p>25 A Yes.</p>	<p>264</p> <p>1 A I think I knew that there was such an</p> <p>2 agreement, but I've never seen it.</p> <p>3 Q You've never seen it before today and that</p> <p>4 you're sure about, right?</p> <p>5 A Yes.</p> <p>6 Q Did you ever ask for a copy of it?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q Were you ever sent a copy of it?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Okay. You knew -- you specifically were</p> <p>11 involved with authorizing payments from Sentinel</p> <p>12 for legal fees associated with the UBS litigation</p> <p>13 in New York, correct?</p> <p>14 A Say that one more time, please.</p> <p>15 Q You were involved with authorizing</p> <p>16 payments to be made from Sentinel for legal fees</p> <p>17 associated with the UBS litigation in New York,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q In fact, you directed Sentinel to make</p> <p>21 certain payments to lawyers and vendors associated</p> <p>22 with the legal work done in New York against UBS,</p> <p>23 correct?</p> <p>24 A I don't want to say I directed them to.</p> <p>25 I'll say we requested that they do so.</p>

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<p>265</p> <p>1 Q And in every single instance, they</p> <p>2 followed your request for payment of legal fees</p> <p>3 associated with the New York litigation against</p> <p>4 UBS, correct?</p> <p>5 A I can't say --</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 A I can't say every single time, but I think</p> <p>8 pretty much every time, if not every.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q You can't, as you sit here today, identify</p> <p>11 a single time where they did not follow your</p> <p>12 directions in terms of paying legal fees or costs</p> <p>13 associated with the litigation pending in</p> <p>14 New York, correct?</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 A Sitting here today, I'm not aware of any</p> <p>17 time that they refused to pay requested legal</p> <p>18 fees.</p> <p>19 MR. CLUBOK: What was your form objection?</p> <p>20 MS. SMITH: You said direction and he said</p> <p>21 he didn't direct. He said he requested.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q In every single time that you requested</p> <p>24 Sentinel pay any legal fees or costs associated</p> <p>25 with the New York litigation, they abided by that</p>	<p>267</p> <p>1 at Highland.</p> <p>2 Q Did you ever request that anyone consider</p> <p>3 whether or not a ATE policy that was related to a</p> <p>4 judgment would be considered to be an asset of the</p> <p>5 beneficiary of that policy? Let me ask that</p> <p>6 again.</p> <p>7 If there's an ATE policy -- and by the</p> <p>8 way, that after the event, what was the event</p> <p>9 that's referenced in the ATE policy?</p> <p>10 A I haven't read the policy, sir.</p> <p>11 Q Did you have -- they told you that legal</p> <p>12 fees were part of the policy. Did they tell you</p> <p>13 that a settlement would be an event that would be</p> <p>14 impacted by the policy?</p> <p>15 A Well, those are two slightly different</p> <p>16 questions. Can we break them into two, please?</p> <p>17 Q Did anyone, in words or substance, tell</p> <p>18 you if there was a settlement in the UBS</p> <p>19 litigation, that a Sentinel policy could be used</p> <p>20 to pay the settlement?</p> <p>21 A I believe that was my understanding, yes.</p> <p>22 Q And who gave you that understanding?</p> <p>23 A I don't recall exactly, but it would have</p> <p>24 been probably Mr. Ellington or Mr. Sevilla.</p> <p>25 Q When?</p>
<p>266</p> <p>1 request, as best as you recall sitting here today,</p> <p>2 correct?</p> <p>3 A Again, I don't remember every single</p> <p>4 instance, but I don't remember any time that they</p> <p>5 didn't do it.</p> <p>6 Q Who told you that you could make requests</p> <p>7 directly to Sentinel and expect that they would</p> <p>8 carry them out with respect to legal fees</p> <p>9 associated with the New York litigation?</p> <p>10 A It was my understanding that that was</p> <p>11 something contemplated in the ATE policy, was that</p> <p>12 Sentinel would pay legal invoices.</p> <p>13 Q How did you know that if you never saw the</p> <p>14 ATE policy?</p> <p>15 A I don't remember who told me, but somebody</p> <p>16 did.</p> <p>17 Q Who?</p> <p>18 A I don't remember. It would have been</p> <p>19 Mr. Sevilla or Mr. DiOrion, most likely.</p> <p>20 Q Did they tell you anything else about the</p> <p>21 policy, other than they would pay all legal fees</p> <p>22 associated with the New York litigation?</p> <p>23 A Maybe they told me other things, but this</p> <p>24 particular subject would have come up because I</p> <p>25 was the person in charge of processing legal fees</p>	<p>268</p> <p>1 A I don't know.</p> <p>2 Q Before the bankruptcy?</p> <p>3 A Yes.</p> <p>4 Q And at any point during the bankruptcy,</p> <p>5 did you ever tell the independent directors or any</p> <p>6 of the lawyers at the Pachulski firm that there</p> <p>7 was this source of funds available to help settle</p> <p>8 the litigation between UBS and the defendants in</p> <p>9 the New York litigation?</p> <p>10 A I don't know that I ever spoke to the</p> <p>11 Pachulski firm about settlement of the New York</p> <p>12 litigation.</p> <p>13 Q Did you ever volunteer that there was an</p> <p>14 insurance policy available that could be used to</p> <p>15 satisfy the judgment in the New York litigation?</p> <p>16 A I don't believe I ever spoke to Pachulski</p> <p>17 about satisfaction of the judgment in New York or</p> <p>18 settlement of the New York litigation.</p> <p>19 Q So is that a no to my question?</p> <p>20 A That's right.</p> <p>21 Q And you understood also from Mr. Sevilla</p> <p>22 or Mr. Ellington that the after-the-event policy</p> <p>23 could be used to satisfy a judgment in addition to</p> <p>24 satisfying settlement or legal fees in connection</p> <p>25 with the New York litigation, correct?</p>

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<p>269</p> <p>1 A I don't know that that's something we ever 2 discussed, but it would be logical. But I don't 3 recall ever discussing that point. 4 Q You never suggested, in words or 5 substance, that either the independent directors 6 or the Pachulski lawyers should look into whether 7 the Sentinel after-the-event policy could be used 8 to help satisfy the judgment that was entered 9 against CDO Fund and SOHC, correct? 10 A We never discussed settlement or 11 satisfaction of a judgment against those two 12 entities, whether the insurance policy or from any 13 other source of funds. 14 Q So that's a yes to my question, correct? 15 MS. SMITH: Objection, form. 16 BY MR. CLUBOK: 17 Q I would just like you to try to answer my 18 question. You gave me a broader answer, which is 19 interesting, but I'm not going to ask you to do 20 that and I am going to ask for my time if you 21 don't just -- make me ask these questions again. 22 So please answer the question I asked. 23 MS. SMITH: Andy, the questions are so 24 long and they're multiple declarative sentences, 25 followed by comma, correct. That's the --</p>	<p>271</p> <p>1 possibly be used to help satisfy the billion 2 dollar judgment? 3 A That question assumes -- I don't want to 4 make an assumes facts not in evidence objection 5 for myself, but that's what I'm saying. It 6 assumes things that didn't happen and I told you 7 the thing that didn't happen. 8 Q Yeah, I understand you want to tell me 9 that you never discussed anything about the 10 judgment, but I'm asking you a narrower question. 11 And it's very simple and you've spent -- wasted 12 five minutes and I'm going to add to my time at 13 least, and I just want to know. 14 Fair to say that you never suggested, in 15 words or substance, to the directors or to the 16 Pachulski lawyers, that they should look into 17 whether the Sentinel ATE policy could be used to 18 satisfy the judgment that UBS had obtained against 19 CDO Fund and SOHC, correct? 20 A And my -- 21 MS. SMITH: Objection, form. 22 A And my answer is that assumes that I spoke 23 to the Pachulski firm or the independent directors 24 about satisfaction of the judgment or 25 settlement --</p>
<p>270</p> <p>1 MR. CLUBOK: Okay. I'm going to ask -- 2 MS. SMITH: It gets confusing. 3 MR. CLUBOK: You didn't even object on 4 form. 5 MS. SMITH: Objection, form. 6 MR. CLUBOK: It's too late after I asked 7 the question. So with no form objection, I ask 8 the following question and I'm going to ask 9 Mr. Leventon to answer this question. 10 A Okay. 11 BY MR. CLUBOK: 12 Q Isn't it true that you never suggested, in 13 words or substance, to either the independent 14 directors or any of the Pachulski lawyers that 15 they should look into whether the Sentinel 16 ATE policy could be used to help satisfy the 17 judgment that had been entered against CDO Fund 18 and SOHC? 19 A My answer is I disagree with the premise 20 of the question. I can explain why. It's the 21 explanation I just gave. 22 Q I don't want you to explain why. I want 23 to say, did you ever suggest, in words or 24 substance, to either the directors or the 25 Pachulski lawyers that the ATE policy could</p>	<p>272</p> <p>1 BY MR. CLUBOK: 2 Q It doesn't -- 3 A -- which it didn't. 4 Q It doesn't assume that at all. I never 5 assumed that. In fact, I assumed you didn't. It 6 assumes the opposite. So I'm not asking you to 7 quibble with me about what supposedly is assumed 8 or not. I just want you to answer a question. 9 My question is, you never volunteered to 10 the independent directors or to any lawyer at the 11 Pachulski firm that they should look into whether 12 or not the Sentinel ATE policy could be used to 13 satisfy the billion dollar judgment that had been 14 discussed during the course of the bankruptcy, 15 correct? 16 A That was never a conversation that we had. 17 Q You certainly discussed with others at 18 Highland during the bankruptcy, the possibility of 19 settling or satisfying the judgment in the 20 New York litigation, correct? 21 MS. SMITH: Objection to form. 22 A I don't know that I did. 23 BY MR. CLUBOK: 24 Q Well -- 25 A I thought that action was stayed.</p>

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<p>273</p> <p>1 Q You -- did you ever communicate with 2 anyone about the possibility that the ATE policy 3 could be used to satisfy the judgment that had 4 been entered in the New York litigation after the 5 bankruptcy? 6 A I don't know if I did or not. I don't 7 remember. 8 Q In fact, you specifically engaged in 9 analysis for Sentinel's auditors about the 10 potential impact of the judgment in the New York 11 litigation on the ATE policy, didn't you? 12 A I believe I spoke to Beecher Carlson at 13 some point about the impact of the judgment on the 14 policy. 15 Q And you never told the independent 16 directors that you were having those discussions, 17 correct? 18 A It wouldn't have come up ever, so, no, we 19 never had those conversations. 20 Q And you never told the Pachulski lawyers 21 that you were having discussions with the auditors 22 for the Sentinel policy about the potential impact 23 of the judgment on the policy, correct? 24 A It would never have come up with the 25 Pachulski lawyers, so, no, we didn't have those</p>	<p>275</p> <p>1 chart is clearly after the judgment because it 2 refers to the Phase 1 decision, correct? 3 A Well, it -- it refers to the -- yes, the 4 Phase 1 decision from November. 5 Q Right. And that's this -- the decision 6 that led to the so-called billion dollar judgment, 7 correct? 8 A That's correct. 9 MS. SMITH: Objection, form. 10 BY MR. CLUBOK: 11 Q And there's a number of expected payouts 12 from Sentinel as a result of that judgment. Do 13 you see that? 14 A I see Mr. Kemp's chart, yes. 15 Q And it appears that this -- he sends you 16 this chart and he asked you if the actuarial 17 identification of lightly -- likely outcomes are 18 reasonable. Do you see that? 19 A Yes. 20 Q And they've got one possibility of 21 settlement where the Sentinel -- and this is all 22 expected payouts by Sentinel that are being 23 assessed, correct? 24 MS. SMITH: Objection, form. 25 A I believe that's right, yes.</p>
<p>274</p> <p>1 conversations. 2 Q In fact, you specifically analyzed 3 different outcomes and assigned percentages to 4 settlement and to other scenarios to try to 5 calculate the potential liability for Sentinel in 6 connection with the New York litigation; isn't 7 that true? 8 A I don't recall that. 9 Q I'm going to hand you what we're going to 10 mark as Exhibit 68. 11 (Deposition Exhibit 68 marked for 12 identification.) 13 BY MR. CLUBOK: 14 Q Exhibit 68 is a two-page document 15 Bates-labeled 95 and 96. This is a document 16 that's an e-mail chain beginning at the very first 17 e-mail, May 24th, 2019, from Lawrence Kemp to you 18 and then it picks up June 16, 2020, from Lawrence 19 Kemp to you and you respond. Do you see that? 20 A I do. 21 Q And here it looks like there is a request 22 for an update on what happened with respect to the 23 New York litigation, correct? 24 A Yes. 25 Q And this analysis that's reflected in the</p>	<p>276</p> <p>1 MR. CLUBOK: What's the form objection to 2 that question? 3 MS. SMITH: It doesn't say that they're 4 the expected payouts for Sentinel. 5 MR. CLUBOK: That's why I asked the 6 question. But in any event. 7 BY MR. CLUBOK: 8 Q This was a question for you to affirm 9 whether they were reasonable estimates for 10 potential payouts by Sentinel because of its 11 ATE policy. Is that what you understood this to 12 be? 13 A I think that's right, yes. 14 Q And one possibility that you agreed was a 15 50 percent probability is that the plaintiff, that 16 is UBS, would pursue recovery exclusively through 17 bankruptcy proceedings. Do you see that? 18 A I see where it says that, yes. 19 Q And if that were to happen, you told them 20 to expect that Sentinel would pay zero. Do you 21 see that? 22 A I didn't tell him to expect that. This is 23 the assumptions he's giving me. 24 Q You agreed that it was a reasonable 25 assumption that there was a 50 percent chance that</p>

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<p>277</p> <p>1 UBS would pursue its recovery against the insureds 2 under the ATE policy exclusively through the 3 bankruptcy proceedings and therefore there would 4 be zero paid out from the ATE policy, correct? 5 A I didn't -- I agreed with Mr. Kemp's 6 analysis -- or I didn't change it. 7 Q You agreed that it was a reasonable 8 assumption? 9 A Yes. 10 Q And you also agreed that if the Phase 1 11 decision were affirmed, then the expected payout 12 would be \$91 million from the ATE policy, correct? 13 A That's what that says, yes. 14 Q And you said there was a reasonable 15 assumption that there would only be a 20 percent 16 chance of that, correct? 17 A That's not exactly right. Because it's 18 total probabilities, so it's not isolating just 19 the probability of success on the appeal. 20 Q But the total -- okay. I see. You 21 thought there was a 50 percent chance that we 22 wouldn't even -- that UBS wouldn't even bother to 23 continue the litigation but instead would settle 24 the case or pursue recovery just through the 25 bankruptcy proceeding?</p>	<p>279</p> <p>1 Q Right. So you at one point had a bunch of 2 settlement -- sorry. At one point you had a bunch 3 of damages outcomes that included scenarios 4 involving winning on hedging, but by the time the 5 trial was done, you knew that that was not going 6 to happen, correct? 7 A I know the scenarios incorporated hedging. 8 I would have to go back and look at what they 9 said. But certainly by the end of trial, we would 10 have -- excuse me. Certainly by the end of the 11 trial, we would have known that the Court -- the 12 trial court had ruled against us on hedging. 13 Q And the -- anyway, back to this. Did you 14 ever -- when you're responding to Mr. Kemp, did 15 you inform Mr. Seery in any way, directly or 16 indirectly, through the chain of command about 17 this analysis and the potential payout from the 18 ATE policy with respect to the New York 19 litigation? 20 A Mr. Surgent would have been aware of the 21 potential payout, but other than that, I don't 22 know if there's anyone else. And Mr. Ellington 23 would have been, but I mean that's my whole -- 24 that's my chain of command. 25 Q Did you inform Mr. Surgent about this</p>
<p>278</p> <p>1 A I mean, in terms of the 20 percent, the 2 20 percent is in terms of the total outcome. I'm 3 not saying that the appeal is only 20 percent. 4 Like that UBS has an 80 percent chance of losing 5 its appeal, that's not what I thought this said. 6 Q Okay. Because at the time you thought it 7 was nearly certain -- or certainly extremely 8 likely that UBS's judgment would be affirmed if it 9 was even appealed, correct? 10 A Honestly, I don't remember. 11 Q Well, you -- 12 A I still remember that we -- we thought we 13 had really good textual arguments on the synthetic 14 warehouse. 15 Q But you actually believed from day one 16 that UBS was likely to win on liability, right? 17 A Which is a wholly separate issue, yes. 18 Q And you had done analysis -- and by the 19 way, you also knew from the trial, way before the 20 judgment, that you had lost all of your arguments 21 about offsetting the damages due to hedging 22 because the Court ruled from the bench on that 23 during the trial, right? 24 A The Court made a ruling on hedging during 25 the trial, yes.</p>	<p>280</p> <p>1 analysis you were doing in June of 2020? 2 A No, but he was aware of the ATE policy and 3 what it covered. 4 Q Again, then, it's not the question at all 5 that I asked you. You've just volunteered -- 6 somehow you find it okay to volunteer information 7 about Mr. Surgent, but you never volunteered 8 anything about the ATE policy in the whole time 9 you worked for Mr. Seery. 10 MS. SMITH: Objection, badgering. 11 BY MR. CLUBOK: 12 Q My question to you, without -- and I'm 13 asking you not to volunteer information that's not 14 responsive to this question, is did you ever 15 inform Mr. Seery in any way directly or indirectly 16 through the chain of the command about the 17 analysis and potential payout under the ATE policy 18 that's reflected in Exhibit 68? 19 A I don't believe that I ever discussed 20 Exhibit 68 with Mr. Seery. 21 MS. SMITH: Andy, is now a good time for a 22 break? 23 MR. CLUBOK: I'm going to finish up one 24 more thing here. 25</p>

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<p>281</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you tell anyone else in the</p> <p>3 organization other than Mr. Seery or the debtor's</p> <p>4 outside counsel, the Pachulski firm, about this</p> <p>5 analysis that you had performed or that you had</p> <p>6 blessed?</p> <p>7 A I believe -- without characterizing</p> <p>8 whether it's been performed or blessed, the</p> <p>9 document will speak for itself, but I believe that</p> <p>10 Mr. DiOrio was aware of this analysis.</p> <p>11 Q Why do you believe that?</p> <p>12 A Because he was the person who was in</p> <p>13 charge of the -- coordinating the Sentinel audit.</p> <p>14 Q Who made Mr. DiOrio aware of this?</p> <p>15 A I believe it would have been me.</p> <p>16 Q Who else did you make aware of this other</p> <p>17 than Mr. DiOrio and obviously Mr. Kemp?</p> <p>18 A This specific analysis, I don't know that</p> <p>19 I discussed it with anyone else.</p> <p>20 Q Did you?</p> <p>21 A Not that I recall.</p> <p>22 Q I'm going to hand you what's been marked</p> <p>23 as Exhibit 53. Exhibit 53 is an e-mail dated</p> <p>24 June 16th, 2020 in which you forward this analysis</p> <p>25 to Mr. DiOrio, Mr. Sevilla and Katie Irving. Do</p>	<p>283</p> <p>1 independent directors or with their outside</p> <p>2 counsel?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I only remembered sharing it with</p> <p>5 Mr. DiOrio. So I can't say that I expected this</p> <p>6 information to be -- that I recall expecting this</p> <p>7 information to be shared with the independent</p> <p>8 directors.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Did you bring this to Mr. Sargent's</p> <p>11 attention in 2020?</p> <p>12 A This document? Not that I recall.</p> <p>13 Q How about this analysis or anything about</p> <p>14 this subject in 2020?</p> <p>15 A This analysis, no. Anything about this</p> <p>16 subject, I would have to think about further.</p> <p>17 Q This analysis clearly -- the people you</p> <p>18 sent this e-mail to, you expected them to all know</p> <p>19 about the ATE policy, right?</p> <p>20 A They all did know about the ATE policy.</p> <p>21 Q And you discussed this analysis also with</p> <p>22 Mr. Ellington at some point?</p> <p>23 A I don't know that I did.</p> <p>24 Q But you certainly never mentioned the</p> <p>25 ATE policy again to Mr. Sargent at any point after</p>
<p>282</p> <p>1 you see that?</p> <p>2 A Yes. I remembered forwarding it to</p> <p>3 Mr. DiOrio. I forgot who I CC'd, which was</p> <p>4 Mr. Sevilla and Ms. Irving.</p> <p>5 Q And you did not -- you forwarded it to</p> <p>6 those three individuals but not to Greg Demo,</p> <p>7 correct?</p> <p>8 A Greg Demo is not on this e-mail.</p> <p>9 Q And you did not forward it to</p> <p>10 Mr. Feinstein or Mr. Morris at the Pachulski firm,</p> <p>11 correct?</p> <p>12 A That's correct.</p> <p>13 Q And you did not forward it to Mr. Nelms or</p> <p>14 Mr. Dubel or Mr. Seery, correct?</p> <p>15 A No -- nobody is on this e-mail except for</p> <p>16 the people on this e-mail.</p> <p>17 Q Is there any other way that you</p> <p>18 communicated this information that you chose to</p> <p>19 share with Mr. DiOrio, Mr. Sevilla and</p> <p>20 Ms. Irving -- is there any other way that you</p> <p>21 believe you ever tried to communicate this</p> <p>22 information that you chose to share with</p> <p>23 Mr. DiOrio, Mr. Sevilla and Ms. Irving that's</p> <p>24 reflected in Exhibit 68 with anybody at all who</p> <p>25 you expected to share the information with the</p>	<p>284</p> <p>1 the time the debtor declared bankruptcy, correct?</p> <p>2 A I don't know if we talked about it or not.</p> <p>3 I don't remember.</p> <p>4 Q As you sit here today, you can't recall</p> <p>5 ever reminding Mr. Sargent about the ATE policy</p> <p>6 after the bankruptcy commenced, correct?</p> <p>7 A Sitting here today, I can't remember that</p> <p>8 conversation having taken place.</p> <p>9 MR. CLUBOK: Okay. Let's take a break.</p> <p>10 THE VIDEOGRAPHER: The time is 5:20 p.m.</p> <p>11 We are off the record.</p> <p>12 (Recess taken from 5:20 p.m. CDT to</p> <p>13 5:39 p.m. CDT)</p> <p>14 THE VIDEOGRAPHER: The time is 5:39 p.m.</p> <p>15 We are back on the record.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q We're turning to Exhibit 59. Exhibit 59</p> <p>18 is an e-mail chain with the top e-mail dated</p> <p>19 August 11th, 2017, from Carter Chism, C-h-i-s-m,</p> <p>20 to Mr. Patel, P-a-t-e-l, attaching a document</p> <p>21 that's called CDO Fund and HFP Balance Sheets at</p> <p>22 8/7/17. It's an Excel sheet that's attached as</p> <p>23 part of Exhibit 59. Do you see that?</p> <p>24 A I do.</p> <p>25 MS. SMITH: And like yesterday, Shannon,</p>

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<p>285</p> <p>1 is this the full exhibit of the Excel?</p> <p>2 MR. CLUBOK: It's the same document that</p> <p>3 was used yesterday, Exhibit 59. It was marked</p> <p>4 yesterday, I believe.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q So for Exhibit 59, we're going to turn to</p> <p>7 page 3, which is the first, working backwards</p> <p>8 e-mail in the chain.</p> <p>9 A Can you -- will you give me the Bates</p> <p>10 number?</p> <p>11 Q It ends with 85.</p> <p>12 A Okay. Got it.</p> <p>13 Q And the Bates label ending in 85 is where</p> <p>14 the e-mail starts, and it starts with Mr. Stoops</p> <p>15 sending an e-mail to a number of people, including</p> <p>16 yourself. Do you see that?</p> <p>17 A I do, yes.</p> <p>18 Q And the e-mail says, Jeremy, who is the</p> <p>19 first person on the To line, you are the third</p> <p>20 person on the To line, says: Jeremy, Please send</p> <p>21 custodial admin details for the following entities</p> <p>22 to JP Sevilla and Isaac (copied).</p> <p>23 That Isaac is you, correct?</p> <p>24 A Yes.</p> <p>25 Q And they asked for custodial admin details</p>	<p>287</p> <p>1 goal was to transfer all of the assets out of HFP</p> <p>2 and CDO Fund to Sentinel to purchase the</p> <p>3 \$100 million ATE policy in August of 2017,</p> <p>4 correct?</p> <p>5 A I don't know that it's clear from this</p> <p>6 document per se, but I did know that, you know,</p> <p>7 substantially all of the assets were going to</p> <p>8 be -- were included in the ATE policy.</p> <p>9 Q And the attachment, which has a number of</p> <p>10 different worksheets including the first one which</p> <p>11 says CDO Opportunity Master Fund, LP, Combined</p> <p>12 Assets and Liabilities, and then another document</p> <p>13 that says Highland Financial Partners, LP,</p> <p>14 Combined Assets and Liabilities, show that, the</p> <p>15 assets and liabilities of those two respective</p> <p>16 entities, correct?</p> <p>17 A Yes. But I don't know that those -- well,</p> <p>18 I know they were attached to -- this was attached</p> <p>19 to the top-level e-mail and that's what it shows.</p> <p>20 Q Right. And one question I have is --</p> <p>21 well, first of all, there's a schedule that was</p> <p>22 constructed in connection with the purchase</p> <p>23 agreement. The purchase agreement is Exhibit 2</p> <p>24 and I believe you said you've never seen it. I'm</p> <p>25 going to give you a copy of it just to confirm</p>
<p>286</p> <p>1 for Highland Financial Partners, we've called HFP;</p> <p>2 CDO Hold Co, which is a sub of HFP, correct?</p> <p>3 A Yes.</p> <p>4 Q Highland Financial Corp., which is another</p> <p>5 sub of HFP at the time, correct?</p> <p>6 A I think so, but I'm not 100 percent sure.</p> <p>7 Q And then SOHC, which was a sub of HFP at</p> <p>8 the time, right?</p> <p>9 A Yes.</p> <p>10 Q Then the CDO Master Fund and two of its</p> <p>11 subsidiaries or affiliates, correct?</p> <p>12 A Those look like the feeder funds.</p> <p>13 Q Okay. The feeder funds. But there are</p> <p>14 basically four HFP entities, the first four names</p> <p>15 that I mentioned, and then there are three</p> <p>16 CDO Fund entities, correct?</p> <p>17 A Yes.</p> <p>18 Q And he says he included those feeder funds</p> <p>19 for CDO just in case there's any cash held at</p> <p>20 these entities. Do you see that?</p> <p>21 A I do see where he says that, yes.</p> <p>22 Q And this is all part of the purchase of</p> <p>23 the ATE policy in August of 2017, correct?</p> <p>24 A That's what it appears to be.</p> <p>25 Q And it's clear from reading this that the</p>	<p>288</p> <p>1 that that's true. This was Exhibit 2. It's a</p> <p>2 Purchase Agreement dated August 7th, 2017.</p> <p>3 A Mr. Clubok, are we done with 59?</p> <p>4 Q No.</p> <p>5 A Should I put it up or keep it --</p> <p>6 Q I want you to keep it up because I'm going</p> <p>7 to ask you to compare something.</p> <p>8 A Got it. Okay.</p> <p>9 Q There's a purchase agreement that was</p> <p>10 dated as of August 7th, 2017, and you said before</p> <p>11 you believe -- you thought you had never seen</p> <p>12 this. Looking at it now, do you want to change</p> <p>13 your answer or do you still believe you've never</p> <p>14 seen this?</p> <p>15 A No, I don't think I've ever seen this.</p> <p>16 Q Okay. Well, what about Schedule A, which</p> <p>17 is somewhat like that Appendix 1, but it's got</p> <p>18 different assets listed and in some cases</p> <p>19 different values. Have you ever seen Schedule A</p> <p>20 before?</p> <p>21 A No, I haven't.</p> <p>22 Q Okay. And so I take it you don't know</p> <p>23 whether or not the asset information reflected in</p> <p>24 Exhibit 59 was what was used to populate</p> <p>25 Schedule A of Exhibit 2?</p>

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<p>289</p> <p>1 A No. I don't think I've seen either of 2 these two things before. 3 Q Okay. Do you -- why were you part of this 4 whole chain? What was your role in this part of 5 the transaction? And in particular, if you know, 6 why did Mr. Stoops specifically ask for the 7 details to be sent to both you and Mr. Sevilla? 8 A I mean, I don't know what was in 9 Mr. Stoops's mind, but I can speculate. 10 Q What did you understand your role to be at 11 the time in connection with this information that 12 was forwarded to you? 13 A My best guess as to why I was involved in 14 this process is because I was the guy in charge of 15 the legal bills. And so it would have been 16 relevant to payment of the legal wires that you 17 see on the first page of this exhibit. 18 Q And so all of those payments were made 19 prior to the transfers? 20 A I don't know. 21 Q Do you know whether or not there was any 22 effort to satisfy the liabilities of CDO Fund and 23 SOHC -- sorry, strike that. 24 Do you know whether there was any effort 25 to satisfy the liabilities of CDO Fund and HFP</p>	<p>291</p> <p>1 maybe what the difference is, but they weren't 2 exactly the same. 3 Q Fair enough. But at some point UBS had 4 either amended its complaint or submitted expert 5 reports that reflected the roughly \$500 million in 6 principal liability that was ultimately awarded; 7 is that true? 8 A I know the number went down, but I don't 9 remember exactly how it matched up to the final 10 judgment because there were a lot of toggles that 11 went on with the expert reports. 12 Q Right. But let's say within 20 percent 13 the amount that UBS was seeking as of 2017 14 pursuant to its expert reports was the amount that 15 was ultimately awarded; fair to say? 16 A Sitting here today, I don't know the 17 answer to that. They were big numbers. I mean, 18 there's no dispute they were big numbers, but I 19 don't remember exactly what they were, if it was 20 20 percent, 30 percent, 10 percent. 21 Q Okay. Certainly you knew that UBS was 22 seeking at least \$500 million plus interest as of 23 this date of this transfer, correct? 24 A As of August 2017, I think that I knew 25 that UBS was seeking \$500 million or so.</p>
<p>290</p> <p>1 prior to transferring all of these assets to 2 Sentinel in 2017? 3 A I don't know. 4 Q Do you know at that time whether or not 5 there was any estimation that was being made at 6 either of these two entities for amounts that 7 could be due to UBS in connection with the 8 litigation? 9 A To the best of my recollection, accounting 10 had taken UBS's initial complaint and the number 11 identified in the initial complaint and then just 12 rolled that number forward year over year. 13 Q And indeed UBS ultimately collected 14 roughly the amount plus interest that was in its 15 initial complaint pursuant -- or strike that. 16 UBS was awarded as part of Phase 1, 17 roughly the amounts that it had identified in its 18 initial complaint plus PJI, correct? 19 A That's not exactly right. 20 Q Why not? 21 A So the initial complaint was for 22 \$746 million in principal, and to the best of my 23 recollection the judgment principal amount was 24 something like 530. I know, we're talking about 25 enormous numbers where it kind of doesn't matter</p>	<p>292</p> <p>1 Q And the whole aim of this transfer was to 2 create an -- or to purchase an ATE policy with 3 respect to that UBS litigation that was pending in 4 New York, correct? 5 A The August 2017 transaction was the 6 purchase of an ATE policy relative to the UBS 7 state court action. 8 Q Okay. I'm going to turn to Exhibit 4 9 which is a document dated August 11th, 2017, that 10 you are also on the to line. There's a whole host 11 of people. 12 A Do I keep or do I throw? 13 Q You can put it in front of me. 14 A No, these? 15 Q You can set it aside. Take a look at 16 Exhibit 4, please. Exhibit 4 is an e-mail from 17 David Willmore to a host of people, including 18 yourself, Mr. Chism, Ms. Irving, Mr. Sevilla, 19 copying Mr. Surgent, Mr. Stoops and others and its 20 subject is Sentinel Wiring Info. Do you see that? 21 A Yes. 22 Q And it -- in an e-mail below, it 23 references instructions to wire cash from all the 24 HFP Funds and all the CDO Funds to Sentinel, 25 correct?</p>

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<p>293</p> <p>1 A That's what Mr. Chism says in his e-mail.</p> <p>2 Q And those two wire transfers totaled</p> <p>3 roughly \$10 million, according to Mr. Willmore's</p> <p>4 e-mail, correct?</p> <p>5 A Yes.</p> <p>6 Q Well, I should say CDO Funds cash totaled</p> <p>7 about \$10 million, according to Mr. Willmore,</p> <p>8 correct?</p> <p>9 A I don't honestly know if -- I mean,</p> <p>10 reading this, Mr. Willmore says there are two</p> <p>11 wires that are CDO Fund wires, which wouldn't</p> <p>12 include HFP. Sitting here today, I have no idea</p> <p>13 whether there were two of them.</p> <p>14 Q Does it ring a bell --</p> <p>15 A That's what it says.</p> <p>16 Q Does it ring a bell that the total amount</p> <p>17 of cash including the HFP cash was closer to</p> <p>18 \$11 million or so?</p> <p>19 A No. No.</p> <p>20 Q But fair to say you understood on</p> <p>21 August 2017, that all of the cash in CDO Fund and</p> <p>22 HFP was being wired to Sentinel, correct?</p> <p>23 A Apparently I did.</p> <p>24 Q And do you know what was the consideration</p> <p>25 for that cash at the time?</p>	<p>295</p> <p>1 does it ring a bell that Mr. Willmore was</p> <p>2 responsible for transferring CDO Fund cash and</p> <p>3 Mr. Stoops was responsible for transferring HFP</p> <p>4 cash?</p> <p>5 A I can infer that from the document and it</p> <p>6 wouldn't surprise me, but I don't know.</p> <p>7 Q Did you at any point ever mention to</p> <p>8 Mr. Seery or to the Pachulski lawyers that all</p> <p>9 this cash had been transferred out of CDO Fund and</p> <p>10 HFP to Sentinel just in 2017, a little over</p> <p>11 two years before the bankruptcy?</p> <p>12 A To the best of my recollection, neither</p> <p>13 myself nor any of the other individuals mentioned</p> <p>14 it to him.</p> <p>15 Q Did you think that you personally as a</p> <p>16 lawyer who was working for the debtor had a</p> <p>17 fiduciary obligation to the debtor at the time?</p> <p>18 A I believe you do, yes.</p> <p>19 Q Did you have a fiduciary obligation to</p> <p>20 ensure that the debtor -- strike that.</p> <p>21 From January 2020 forward, is it fair to</p> <p>22 say that there were independent directors who were</p> <p>23 in charge of the debtor?</p> <p>24 A Yes.</p> <p>25 Q And you understood you ultimately reported</p>
<p>294</p> <p>1 A I knew that it was in consideration of the</p> <p>2 ATE policy.</p> <p>3 Q Did you know how the value of the</p> <p>4 ATE policy compared the total transfers that were</p> <p>5 being made at the time?</p> <p>6 A No, I did not.</p> <p>7 Q Did you know whether it was for equivalent</p> <p>8 value?</p> <p>9 A I didn't know what the assets were so I</p> <p>10 couldn't comment one way or another.</p> <p>11 Q Turning to Exhibit 5, this is a separate</p> <p>12 e-mail from Mr. Stoops that responds to Carter</p> <p>13 Chism's e-mails. And you can see Mr. Stoops says:</p> <p>14 All cash has been sent. Working on DTC</p> <p>15 securities. Still waiting on delivery</p> <p>16 instructions for physicals from Legal.</p> <p>17 You see that?</p> <p>18 A I do.</p> <p>19 Q Was Mr. Stoops the one responsible for</p> <p>20 transferring the HFP cash?</p> <p>21 A I don't know.</p> <p>22 Q Did Mr. Stoops have a role in connection</p> <p>23 with HFP at the time?</p> <p>24 A Yes.</p> <p>25 Q Okay. So looking at these two documents,</p>	<p>296</p> <p>1 up to them?</p> <p>2 A That's fair to say.</p> <p>3 Q And you understood that you had a</p> <p>4 fiduciary duty to ensure that they were made aware</p> <p>5 of all material information necessary to carry out</p> <p>6 their jobs?</p> <p>7 A I'm not sure how -- I'm not sure how</p> <p>8 the -- that I had -- say that one more time. That</p> <p>9 I had a fiduciary duty to make them aware of all</p> <p>10 facts that they needed for their job?</p> <p>11 Q Yeah. Did you believe as part of the</p> <p>12 fiduciary duties that you understood you owed the</p> <p>13 debtor, that you had an obligation to the best of</p> <p>14 your ability to make sure that Mr. Seery and the</p> <p>15 other directors were apprised of any material</p> <p>16 information that you reasonably believed would be</p> <p>17 necessary for them to do their jobs in managing</p> <p>18 the estate?</p> <p>19 A No. My understanding -- I understood my</p> <p>20 job was to do the tasks that I was assigned.</p> <p>21 Q There was a number of times after this</p> <p>22 transfer in August 2017, where questions arose</p> <p>23 about the transfers that were supposed to have</p> <p>24 been made, correct?</p> <p>25 A Sorry, I really don't --</p>

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<p>297</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A I don't understand the question as asked.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q So in August 2017, you were copied on</p> <p>5 these documents that purported to show there had</p> <p>6 been transfers made from CDO Fund and HFP to</p> <p>7 Sentinel Reinsurance, correct?</p> <p>8 A Yes.</p> <p>9 Q And over the next couple of years, did you</p> <p>10 come to learn that there were questions about</p> <p>11 whether those transfers had properly been</p> <p>12 effectuated?</p> <p>13 A I didn't really get involved in that until</p> <p>14 mid -- like kind of third quarter of 2020.</p> <p>15 Q Well, you were asked about information</p> <p>16 relating to the transfers as early as February of</p> <p>17 2019, weren't you?</p> <p>18 A I was? Okay. I don't recall that.</p> <p>19 Q I'm going to share with you what's been</p> <p>20 marked as Exhibit 62. Exhibit 62 has an e-mail</p> <p>21 chain that begins with Ernest Ramos of BNY Mellon</p> <p>22 reaching out to Carter Chism about custody</p> <p>23 invoices.</p> <p>24 A I apologize. Where are you, sir?</p> <p>25 Q The very last e-mail in the chain working</p>	<p>299</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Sir, do you remember this exchange? And</p> <p>3 in particular I want to point your attention to</p> <p>4 the first page that's Bates-labeled 35 of</p> <p>5 Exhibit 62 where you --</p> <p>6 A Go ahead.</p> <p>7 Q Where you are specifically e-mailing</p> <p>8 Carter Chism to say that: CDO Fund is and has</p> <p>9 been insolvent since the financial crisis of 2009.</p> <p>10 Do you see that?</p> <p>11 A I do see that, yes.</p> <p>12 Q And then in response, Carter Chism says:</p> <p>13 Thinking about this further, I believe the</p> <p>14 CDO Opps fund was included in the transfer to</p> <p>15 Sentinel.</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q And this is an e-mail that you and</p> <p>19 Mr. Sevilla and Mr. DiOrio and Clifford Stoops are</p> <p>20 all copied on, correct?</p> <p>21 A Yes.</p> <p>22 Q So this is another reminder that there had</p> <p>23 been this transfer to Sentinel, right?</p> <p>24 A I suppose, yes.</p> <p>25 Q Okay. Now, your e-mail to Carter Chism</p>
<p>298</p> <p>1 backwards. If you turn to the page that's</p> <p>2 Bates-labeled 39 at the end.</p> <p>3 A Give me a moment to review it.</p> <p>4 MS. SMITH: Is this the complete e-mail?</p> <p>5 MR. CLUBOK: This is the e-mail that was</p> <p>6 marked as Exhibit 62 yesterday that I presume is</p> <p>7 the complete e-mail.</p> <p>8 MS. SMITH: In the middle it says: See</p> <p>9 column M for approved action, and I don't see</p> <p>10 anything with column M.</p> <p>11 MR. CLUBOK: What page are you on?</p> <p>12 MS. SMITH: 9039.</p> <p>13 MR. CLUBOK: Yeah. Well, I don't know.</p> <p>14 Sometimes the top -- yeah. There was originally</p> <p>15 attachments, but on this particular version of the</p> <p>16 document, I don't believe it included the</p> <p>17 attachments. But in any event, yeah -- -- look,</p> <p>18 as I stated, the first e-mail refers to attached</p> <p>19 invoices. Obviously those attached invoices</p> <p>20 aren't included as part of this document, just the</p> <p>21 cover e-mail. And then Carter Chism talks about</p> <p>22 column M presumably in the attached invoices. If</p> <p>23 I could just focus the questions I want to ask of</p> <p>24 Mr. Leventon.</p> <p>25</p>	<p>300</p> <p>1 says: Jason, CDO Fund and has been insolvent.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Did you mean to send that e-mail to Jason</p> <p>5 Martinez?</p> <p>6 A No.</p> <p>7 Q Why did you say Jason?</p> <p>8 A I was suggesting -- I don't recall</p> <p>9 exactly, but I know what my practice was and I</p> <p>10 think I was suggesting language to Mr. Chism that</p> <p>11 he could use to go back to Mr. Martinez.</p> <p>12 Q I see. So you -- this is a draft e-mail</p> <p>13 of what you were suggesting that Mr. Chism could</p> <p>14 send to Jason Martinez in response to the question</p> <p>15 that he asked, correct?</p> <p>16 A Correct.</p> <p>17 Q And when you say that CDO Fund is and has</p> <p>18 been insolvent since the financial crisis, you</p> <p>19 weren't going to tell him that CDO Fund actually</p> <p>20 had some assets in August of 2017, correct?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I mean, I don't know that I was going to</p> <p>23 mention it in this communication, but Bank of</p> <p>24 New York Mellon was actually the bank for those</p> <p>25 funds that was directly involved in apparently the</p>

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<p>301</p> <p>1 transfers, as I'm noticing from the earlier</p> <p>2 exhibits. So they certainly knew about it.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Do you know what Sebastian Clarke is?</p> <p>5 A Who?</p> <p>6 Q Have you ever heard of an entity called</p> <p>7 Sebastian Clarke?</p> <p>8 A No, sir.</p> <p>9 Q Are you aware of Sentinel ever</p> <p>10 transferring assets to an entity called Sebastian</p> <p>11 Clarke?</p> <p>12 A I'm sorry, sir, I don't know that name.</p> <p>13 Q You've never heard that name before ever?</p> <p>14 A Candidly, I thought it was a person when</p> <p>15 you first asked it.</p> <p>16 Q Okay. I'm going to hand you what we're</p> <p>17 going to mark as Exhibit 69.</p> <p>18 (Deposition Exhibit 69 marked for</p> <p>19 identification.)</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q It is a copy of UBS's First Request for</p> <p>22 Production of Documents to Debtor Highland Capital</p> <p>23 Management, dated September 28th, 2020. Do you</p> <p>24 see that?</p> <p>25 A Yes.</p>	<p>303</p> <p>1 Q Was there -- so was Mr. Willmore still</p> <p>2 there?</p> <p>3 A Mr. Willmore was no longer employed by the</p> <p>4 debtor.</p> <p>5 Q Who was Mr. Willmore employed by at that</p> <p>6 time?</p> <p>7 A He was employed -- well, I don't know who</p> <p>8 exactly he was employed by, but he started to work</p> <p>9 for some NexPoint affiliate and didn't work on any</p> <p>10 further Highland stuff.</p> <p>11 Q Okay. Did you inquire of Mr. Willmore as</p> <p>12 to where you would go to find the CDO Fund asset</p> <p>13 information?</p> <p>14 A I think I did actually.</p> <p>15 Q And what did he tell you?</p> <p>16 A He generally pointed me to some accounting</p> <p>17 drives on the G drive.</p> <p>18 Q Well, you certainly had an e-mail that</p> <p>19 talked about how all of CDO Fund's assets had been</p> <p>20 moved to Sentinel in approximately August of 2017,</p> <p>21 correct? Actually, you had many e-mails that</p> <p>22 reflected that in your inbox, correct?</p> <p>23 A I mean, as I previously stated, the</p> <p>24 e-mails were separate from the production process</p> <p>25 that I was involved in and that was agreed to with</p>
<p>302</p> <p>1 Q So were you -- you were partially</p> <p>2 responsible for helping respond to this discovery</p> <p>3 request; is that true?</p> <p>4 A I was part of a team of people</p> <p>5 responsible.</p> <p>6 Q Did you review this request carefully?</p> <p>7 A I don't know about carefully, but I</p> <p>8 certainly reviewed it.</p> <p>9 Q Would it have been your practice to review</p> <p>10 a document request like this carefully?</p> <p>11 A I definitely reviewed it and understood</p> <p>12 its contents. I don't know what carefully means,</p> <p>13 but I definitely reviewed it and knew what it</p> <p>14 said.</p> <p>15 Q And at the time you reviewed this, you had</p> <p>16 the ability to obtain the asset information</p> <p>17 about -- from CDO Fund, SOHC and HFP, correct?</p> <p>18 A That's a really hard question to answer.</p> <p>19 Not exactly. Not really.</p> <p>20 Q Well, who would have had information about</p> <p>21 CDO Fund in September of 2020 who was still</p> <p>22 working for the debtor?</p> <p>23 A So that's the problem, is I don't think</p> <p>24 there was an accountant who was responsible for</p> <p>25 CDO Fund at that point.</p>	<p>304</p> <p>1 Pachulski, and all of those e-mails were actually</p> <p>2 sitting at Meta-e and were accessible by</p> <p>3 Pachulski.</p> <p>4 Q Right. But you personally had access to</p> <p>5 information about transfers from CDO Fund to</p> <p>6 Sentinel at the time you reviewed this document</p> <p>7 request that's been marked as Exhibit 69, correct?</p> <p>8 A In the e-mails, yes.</p> <p>9 Q And you knew that that information existed</p> <p>10 in the e-mails, whether you chose to look at them</p> <p>11 or not at the time, right?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I knew that information was in the e-mails</p> <p>14 that had been sent to Meta-e.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q And did you specifically tell anyone at</p> <p>17 the Pachulski firm that there is information about</p> <p>18 what happened to CDO Fund's assets in August of</p> <p>19 2017, available in the e-mails that were sitting</p> <p>20 at Meta-e?</p> <p>21 A No, the e-mails were carved out completely</p> <p>22 from the process I was involved in.</p> <p>23 Q Same answer with respect to HFP's assets,</p> <p>24 including SOHC's assets, correct?</p> <p>25 A Everything that was in the e-mails I did</p>

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<p>305</p> <p>1 not look at as part of this response. And I</p> <p>2 understand from Mr. Morris was that he told you</p> <p>3 that we weren't going to be looking through</p> <p>4 e-mails in response to these requests because that</p> <p>5 was being handled separately.</p> <p>6 Q Mr. Morris told you that he told me,</p> <p>7 Andrew Clubok, that?</p> <p>8 A That's --</p> <p>9 Q That's what you're claiming?</p> <p>10 A That's what I recall, is that it was</p> <p>11 agreed that the e-mails would be separate.</p> <p>12 Q Mr. Morris told you that he had an</p> <p>13 agreement with me, Andrew Clubok, that they didn't</p> <p>14 have to search the e-mails for information</p> <p>15 relating to CDO Fund and HFP's assets?</p> <p>16 A That -- it may not have been an agreement</p> <p>17 per se, but it was -- essentially Mr. Morris and</p> <p>18 Mr. Demo told me not to worry about the e-mails</p> <p>19 and they would take care of it.</p> <p>20 Q And did you tell Mr. -- when they told you</p> <p>21 that, did you say, hey, but there's this transfer</p> <p>22 that occurred in 2017 that will show you exactly</p> <p>23 what assets were there at CDO Fund and HFP as of</p> <p>24 August 2017? Did you say anything like that to</p> <p>25 them, in words or substance, when they told you</p>	<p>307</p> <p>1 okay. There isn't a single request in here that</p> <p>2 caused you to mention to the Pachulski firm or</p> <p>3 Mr. Seery or the other directors, hey, there's all</p> <p>4 this information about the assets that were held</p> <p>5 at HFP and CDO Fund and SOHC as of August 2017, if</p> <p>6 we just go look at that time period when the</p> <p>7 assets were all transferred to Sentinel. Nothing</p> <p>8 caused you --</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A You mean in the e-mails, that that</p> <p>11 information was sitting in the e-mails?</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q That that information was available</p> <p>14 anywhere.</p> <p>15 A The only place that I know that it was</p> <p>16 available was the e-mails and that was, again,</p> <p>17 carved out of what I was looking at. But I</p> <p>18 understand that these issues were being looked at</p> <p>19 by whomever was reviewing the e-mails.</p> <p>20 Q Did you think you had any kind of</p> <p>21 fiduciary obligation to affirmatively tell the</p> <p>22 debtor counsel that it wasn't just a treasure hunt</p> <p>23 or a needle in the haystack hunt in those e-mails,</p> <p>24 but that specifically in August of 2017 if they</p> <p>25 focused on your e-mails and Mr. Sevilla's and a</p>
<p>306</p> <p>1 we've got somebody else reviewing the e-mails?</p> <p>2 A No.</p> <p>3 Q And by the way, you were told by Mr. Demo</p> <p>4 that it was a high priority item to get the asset</p> <p>5 information for CDO Fund and SOHC and HFP,</p> <p>6 correct?</p> <p>7 A He may have said that at one point, but</p> <p>8 then we had additional iterations as to how we</p> <p>9 were going to respond and ultimately I was tasked</p> <p>10 with tracing the -- I can't remember if it was</p> <p>11 March or May of 2009, I think it was May of 2009</p> <p>12 through -- but those assets and explain where they</p> <p>13 were today.</p> <p>14 Q If you look at Exhibit 69, you see that</p> <p>15 the request included -- and for No. 8, it was:</p> <p>16 All Documents pertaining to the assets and</p> <p>17 liabilities of HFP, CDO Fund, and SOHC, including,</p> <p>18 but not limited to -- and then it lists a number</p> <p>19 of subcategories. Do you see that?</p> <p>20 A I do.</p> <p>21 Q And did you review that request carefully</p> <p>22 to see what was being requested in terms of assets</p> <p>23 and liabilities of HFP, CDO Fund and SOHC?</p> <p>24 A Yes.</p> <p>25 Q And did you, in words or substance --</p>	<p>308</p> <p>1 few others that we've seen today, they could find</p> <p>2 all the information they were looking for?</p> <p>3 A At that point I was a task lawyer with</p> <p>4 what Pachulski was telling me, so if it was in the</p> <p>5 e-mails, frankly, I just ignored it because they</p> <p>6 had them and I knew that they were focused on</p> <p>7 these issues as well.</p> <p>8 Q And even though you knew they were in the</p> <p>9 e-mails, you ignored them?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A See, let me rephrase. I don't know that</p> <p>12 I, sitting here today, knew that all these</p> <p>13 e-mails -- let me rephrase.</p> <p>14 I don't know that in September 2020 I knew</p> <p>15 that all those e-mails existed from 2017, but to</p> <p>16 the extent they existed, they had been sitting</p> <p>17 with Pachulski from the end of July.</p> <p>18 THE WITNESS: Did they turn off the heat?</p> <p>19 MS. SMITH: Yes, they turned off the air.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MS. DANDENEAU: Wonder if we should open</p> <p>22 the door. Would that be better?</p> <p>23 THE WITNESS: I think that might mess with</p> <p>24 the acoustics.</p> <p>25 MS. DANDENEAU: What?</p>

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<p>309</p> <p>1 THE WITNESS: I think that might mess with</p> <p>2 the acoustics. No, it won't? Maybe.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I'm going to --</p> <p>5 MR. CLUBOK: Keep this here. Let's go to</p> <p>6 this document.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q I'm going to hand you what's been marked</p> <p>9 as Exhibit No. 70.</p> <p>10 (Deposition Exhibit 70 marked for</p> <p>11 identification.)</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q It's an e-mail chain and I'm going to ask</p> <p>14 you to start on the page that's Bates labeled --</p> <p>15 ends with a 17. Turn -- second-to-last page -- or</p> <p>16 third-to-last page. You can see there's an e-mail</p> <p>17 from James Romey at DSI to you, copying Greg Demo</p> <p>18 and Seery.</p> <p>19 A Sorry, this is hard to read. If you'll</p> <p>20 give me a moment.</p> <p>21 Q Right. You're at the page that ends in</p> <p>22 Bates number 117, right?</p> <p>23 MS. SMITH: Let him read the whole thing,</p> <p>24 please.</p> <p>25 A I'm going to review the document.</p>	<p>311</p> <p>1 specifically.</p> <p>2 Q Okay. But it's basically talking about --</p> <p>3 okay. There's questions and it says that there</p> <p>4 may be confusions over the name and David Klos</p> <p>5 asks for you to chime in and they're trying to</p> <p>6 figure out, you know, ownership, I guess, in</p> <p>7 Multi Strat Credit Fund, correct? And in</p> <p>8 particular Greg Demo chimes in and says, beginning</p> <p>9 at the bottom of page 16: The confusion we're</p> <p>10 having is that there's an asset shown on the</p> <p>11 worksheets that we got from Isaac that says</p> <p>12 Highland CDO Opportunity Master Fund has a</p> <p>13 \$21.5 million limited partnership interest in</p> <p>14 MVCDO.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And Greg goes on to say, so the issue you</p> <p>18 raise is exactly the issue we're trying to figure</p> <p>19 out. Going off the org chart, I thought this</p> <p>20 entity was 100 percent owned by MSCF. We're</p> <p>21 trying to figure out what the \$26 million asset on</p> <p>22 CDO Fund's books means and whether it's a direct</p> <p>23 interest in MCVDO [sic] and LP interest in MSCF or</p> <p>24 redemption interest. I haven't seen Highland CDO</p> <p>25 Opportunity Master Fund listed as either an LP or</p>
<p>310</p> <p>1 MR. CLUBOK: In that case, let's go off</p> <p>2 the record.</p> <p>3 THE VIDEOGRAPHER: We are off the record</p> <p>4 at 6:16 p.m.</p> <p>5 (Recess taken from 6:16 p.m. CDT to</p> <p>6 6:19 p.m. CDT)</p> <p>7 THE VIDEOGRAPHER: The time is 6:19 p.m.</p> <p>8 We are back on the record.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Sir, turning to the page in Exhibit 70</p> <p>11 that is -- ends with 17, do you see where there's</p> <p>12 an e-mail from James Romey to you saying: Before</p> <p>13 we give anything to UBS today, we need to track</p> <p>14 down what the Highland Credit Opportunities CDO</p> <p>15 Ltd. partnership interest in MSCF means and how</p> <p>16 it's accounted for on MSCF's books, i.e., whether</p> <p>17 it's part of the existing redemption group, or how</p> <p>18 it has any remaining interest in the fund. Or if</p> <p>19 I'm misunderstanding something, please let me know</p> <p>20 ASAP.</p> <p>21 You see that?</p> <p>22 A Yes.</p> <p>23 Q And MSCF refers to Multi Strat, correct?</p> <p>24 A I think that means the Multi Strat Credit</p> <p>25 Fund. I'm just not sure which level it would be</p>	<p>312</p> <p>1 as one of the redeemers.</p> <p>2 Do you see that?</p> <p>3 A Actually I lost you while you were</p> <p>4 reading, but I will take your word for it that you</p> <p>5 read it right.</p> <p>6 Q I paraphrased it slightly and skipped what</p> <p>7 I thought was not every word.</p> <p>8 A Okay.</p> <p>9 Q But the gist of this is --</p> <p>10 A Could you tell me -- sorry, I don't know</p> <p>11 where we are in the document.</p> <p>12 Q The gist of what Greg is asking --</p> <p>13 A Sorry, which e-mail from Greg?</p> <p>14 Q There's an e-mail from Greg at the bottom</p> <p>15 of the page that ends in 16 --</p> <p>16 A Okay. I'm there.</p> <p>17 Q -- that is to you and other people --</p> <p>18 A Yes.</p> <p>19 Q -- copying Seery --</p> <p>20 A Yes.</p> <p>21 Q -- and says they're having confusion over</p> <p>22 assets shown on worksheets they got from Isaac,</p> <p>23 that's you, about CDO Fund's interest in</p> <p>24 Multi Strat, correct?</p> <p>25 A That's what it says.</p>

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<p>313</p> <p>1 Q And you say: Dave -- and I assume you're</p> <p>2 referring to Dave Klos -- I will call you to</p> <p>3 figure this out.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And then James then follows up and says,</p> <p>7 are you guys available for a call at 6 p.m.</p> <p>8 Eastern for a status check, on the same day. And</p> <p>9 by the way, it says importance high.</p> <p>10 Do you see that?</p> <p>11 A I do.</p> <p>12 Q And Greg says he's going to circulate a</p> <p>13 dial-in, and you then jump in and say: Guys, I</p> <p>14 don't think this is a prerequisite to delivering</p> <p>15 materials to UBS in satisfaction of their</p> <p>16 concerns. I am prepping the documents set for</p> <p>17 delivery tomorrow. Dave has not worked on this,</p> <p>18 so I will just call Greg and James. However, this</p> <p>19 is the current status.</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q And then Scott says: Isaac and me were</p> <p>23 instructed by Jim Seery to get this UBS</p> <p>24 deliverable handled. I was on the phone with -- I</p> <p>25 was just on the phone with Isaac when the e-mail</p>	<p>315</p> <p>1 Q And he says basically, this is really hard</p> <p>2 and we can't find more information about what</p> <p>3 you're asking.</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Is that the impression that he conveys</p> <p>7 from when you read this document?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 A I'll let the document speak for itself.</p> <p>10 The impression that I got at the time was that he</p> <p>11 was butting heads with Mr. Demo.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q That's the only impression you got from</p> <p>14 this exchange, that he's butting heads with</p> <p>15 Mr. Demo?</p> <p>16 A That's the primary impression that I got.</p> <p>17 Q Did you get the impression from this</p> <p>18 document that Mr. Seery, who was the CEO of</p> <p>19 Highland, had made it clear to you and to</p> <p>20 Mr. Ellington that these requests were, in fact, a</p> <p>21 high priority, notwithstanding what</p> <p>22 Mr. Ellington's views were or your views were?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Okay. Let me just ask it very simply.</p>
<p>314</p> <p>1 came through. Don't see how this is urgent.</p> <p>2 Especially relative to UBS request. We will get</p> <p>3 to this when it is a priority.</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q And Greg jumps in and says: Scott and</p> <p>7 Isaac, I spoke to Jim about this issue this</p> <p>8 morning. It is a high priority at this point and</p> <p>9 we need to do what we can to push it to</p> <p>10 conclusion. I understand that it's going to take</p> <p>11 some work.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And then Scott writes a fairly lengthy</p> <p>15 e-mail that begins by saying: I don't think</p> <p>16 there's a need for a call and I can tell you where</p> <p>17 we are currently.</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And that's an e-mail that he copies you</p> <p>21 on, along with Mr. Seery, James Romey and</p> <p>22 David Klos.</p> <p>23 A Yes.</p> <p>24 Q And Greg Demo.</p> <p>25 A Yes.</p>	<p>316</p> <p>1 Did you get the impression from this e-mail</p> <p>2 exchange that's reflected in Exhibit 70, that</p> <p>3 notwithstanding what you and Mr. Ellington may</p> <p>4 have thought about the priority level of these</p> <p>5 requests, Mr. Seery definitely believed it was a</p> <p>6 high priority to respond to these requests from</p> <p>7 UBS?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 A Well, I didn't really know what the answer</p> <p>10 was because I wasn't speaking to Mr. Seery, but</p> <p>11 Greg was saying that Mr. Seery needed one thing</p> <p>12 and Scott's saying, no, he doesn't and I was not</p> <p>13 involved in either of those conversations and then</p> <p>14 it was just going to be me and Dave trying to</p> <p>15 figure things out.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q My simple question to you is, did you,</p> <p>18 from reading this back and forth, have the</p> <p>19 impression that Mr. Seery believed that this was a</p> <p>20 high priority for you to respond to regardless of</p> <p>21 what Mr. Ellington or what you believed?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A So I wasn't sure, because Mr. Ellington</p> <p>24 conveyed essentially that -- I mean, to get the</p> <p>25 deliverable handled, but I don't know that this</p>

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<p>317</p> <p>1 one outstanding item was the most important thing</p> <p>2 in the deliverable. And then Greg thought that</p> <p>3 this one outstanding item was the most important</p> <p>4 thing in the deliverable and I didn't speak to</p> <p>5 Mr. Seery either way to confirm who was right.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Well, wait a second. You were instructed</p> <p>8 by Mr. Seery to get this UBS deliverable handled,</p> <p>9 weren't you?</p> <p>10 A Yes.</p> <p>11 Q And Mr. Seery made it clear to you</p> <p>12 personally in that call that this was a priority,</p> <p>13 didn't he?</p> <p>14 A This deliverable, yes. But this one</p> <p>15 specific item that was holding up the deliverable,</p> <p>16 I don't remember that.</p> <p>17 Q All right. You then read Mr. Seery</p> <p>18 telling your -- or telling this group including --</p> <p>19 sorry.</p> <p>20 You read Mr. Ellington's -- strike that.</p> <p>21 Let me start over.</p> <p>22 You read Mr. Ellington's e-mail to</p> <p>23 Mr. Seery and to others in which he says that</p> <p>24 there are ghost funds such as these target</p> <p>25 entities, and by target entities he means</p>	<p>319</p> <p>1 Herculean task. Do you see?</p> <p>2 A He does.</p> <p>3 Q And he says: Isaac and myself have spent</p> <p>4 in excess of 100 hours trying to piece together</p> <p>5 everything we can to create a true and accurate</p> <p>6 document-based record of what happened with these</p> <p>7 target entities.</p> <p>8 Correct?</p> <p>9 A Yes.</p> <p>10 Q As part of that -- and by the way, was</p> <p>11 that a true statement when you read it, in your</p> <p>12 mind, that you had gone through a Herculean task</p> <p>13 to do everything you could to create a true and</p> <p>14 accurate document-based record of what happened to</p> <p>15 HFP, CDO Fund and SOHC?</p> <p>16 A I think a more fair characterization is we</p> <p>17 had put a substantial amount of effort into</p> <p>18 tracing the May 2009 assets against -- well,</p> <p>19 figuring out what happened to the May 2009 assets.</p> <p>20 Q My question to you is not that question.</p> <p>21 So I want you to answer my question.</p> <p>22 Is it true that you and Mr. Ellington</p> <p>23 did -- had done everything you could to create a</p> <p>24 true and accurate document-based record of what</p> <p>25 happened with HFP, SOHC and CDO Fund as of</p>
<p>318</p> <p>1 CDO Fund, HFP and SOHC, correct?</p> <p>2 A I can assume that's what he means, but I</p> <p>3 don't know.</p> <p>4 Q And he talks about how the ghost funds</p> <p>5 don't have directors, custodians, administrators,</p> <p>6 bank accounts and no one knows -- no one knows</p> <p>7 what they truly retain. Do you see that?</p> <p>8 A I do.</p> <p>9 Q And he claims that UBS is aware of the</p> <p>10 situation because he's personally discussed it</p> <p>11 with Andy Clubok, that's me, several dozen times,</p> <p>12 including as recently as this year, right?</p> <p>13 A He does say that.</p> <p>14 Q And did you know that Mr. Ellington had</p> <p>15 represented to me that these were ghost funds and</p> <p>16 there was no way really as a practical matter to</p> <p>17 figure out how much assets they had or when they</p> <p>18 last had assets or words to that effect?</p> <p>19 A I wasn't privy to your conversations.</p> <p>20 Q Did you -- did Mr. Ellington ever tell</p> <p>21 you, in words or substance, that he had conveyed</p> <p>22 that information to UBS other than what's here in</p> <p>23 Exhibit 70?</p> <p>24 A I don't recall him ever doing that.</p> <p>25 Q Okay. He then said, the project is a</p>	<p>320</p> <p>1 August 15th, 2020?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I think that was a slight</p> <p>4 mischaracterization of the work that we were</p> <p>5 doing, which was tracing the assets.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you --</p> <p>8 A And that we had done a lot of work.</p> <p>9 MR. CLUBOK: Move to strike as</p> <p>10 nonresponsive.</p> <p>11 A Sorry, I was addressing the Herculean task</p> <p>12 portion of it.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Okay. Well, I'm asking you whether it was</p> <p>15 true as Mr. Ellington reported to Mr. Seery and</p> <p>16 others, that as of August 15th, 2020, you were --</p> <p>17 you had spent 100 hours trying to piece together</p> <p>18 everything you could to create a true and accurate</p> <p>19 document-based record of what happened with HFP,</p> <p>20 SOHC and CDO Fund?</p> <p>21 A I think his statement was not precise, and</p> <p>22 I believe that what I stated was a more precise</p> <p>23 characterization of what he was saying.</p> <p>24 Q Did you make any effort to correct his</p> <p>25 statement to this audience?</p>

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<p>321</p> <p>1 A I never responded to this e-mail and I</p> <p>2 wasn't going to get involved in a -- what I viewed</p> <p>3 to be essentially a butting of heads between</p> <p>4 Mr. Ellington and Pachulski.</p> <p>5 Q At the time did you think it was accurate</p> <p>6 that you had been doing everything you could to</p> <p>7 create a true and accurate document-based record</p> <p>8 of what had happened with HFP, SOHC and CDO Funds?</p> <p>9 A That was not what I had been tasked with</p> <p>10 doing. I had been tasked with the other thing</p> <p>11 that I've already described.</p> <p>12 Q So is the answer to my question no?</p> <p>13 A No, I didn't because that wasn't my task.</p> <p>14 Q Is the answer to my question no?</p> <p>15 A I said no, because that's not what I was</p> <p>16 tasked with doing.</p> <p>17 Q Are you saying --</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q You're saying that you had not done</p> <p>21 everything you could to create or to try to create</p> <p>22 a true and accurate document-based record of what</p> <p>23 happened with HFP, SOHC and CDO Fund as of the</p> <p>24 date of this e-mail, correct?</p> <p>25 A Well, I tried to do everything I could and</p>	<p>323</p> <p>1 Q To whom?</p> <p>2 A So Mr. Demo knew exactly what I was</p> <p>3 working on, as did -- well, I take it back. I</p> <p>4 don't know if DSI knew what I was working on. But</p> <p>5 Mr. Demo knew exactly what I was working on and I</p> <p>6 never represented to him, or anybody that I</p> <p>7 remember, maybe I did, but I just -- I don't</p> <p>8 remember having that conversation of I'm going to</p> <p>9 do a forensic audit of the funds.</p> <p>10 Instead, it was, I'm going to identify</p> <p>11 what did they have as of this date, which has</p> <p>12 already been produced to UBS and show UBS what</p> <p>13 happened to those assets.</p> <p>14 Q You've said that you and -- he says that</p> <p>15 you and he were speaking literally daily about</p> <p>16 this. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Is that true, that you were speaking daily</p> <p>19 about responding to UBS's document request with</p> <p>20 respect to the assets?</p> <p>21 A This is the -- before the document</p> <p>22 request.</p> <p>23 Q Okay. This was with respect to -- this is</p> <p>24 before the formal document request.</p> <p>25 A I don't know how to respond to that, sir.</p>
<p>322</p> <p>1 I put a lot of effort into tracing the May 2009</p> <p>2 assets and identifying what happened -- where they</p> <p>3 were today. I put a lot of effort into that.</p> <p>4 Q But you very -- you had not -- okay.</p> <p>5 MR. CLUBOK: Move to strike as</p> <p>6 nonresponsive.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q I just want you to answer my question and</p> <p>9 we are going to add more time to this dep if you</p> <p>10 don't answer my question. Was Mr. Ellington's</p> <p>11 statement that you and he together had tried to do</p> <p>12 everything you could to create a true and accurate</p> <p>13 document-based record of what had happened with</p> <p>14 HFP, SOHC and CDO Fund?</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 A The problem is that's a paraphrase of what</p> <p>17 Mr. Ellington said here and I'm happy to point out</p> <p>18 where, frankly, I disagree with Mr. Ellington on</p> <p>19 this.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q But did you point out to anyone on this</p> <p>22 e-mail chain in any communication, how you</p> <p>23 disagreed with what Mr. Ellington was saying in</p> <p>24 this e-mail that you read?</p> <p>25 A I think I did actually, yes.</p>	<p>324</p> <p>1 It's before the request for production that are</p> <p>2 marked as Exhibit 69.</p> <p>3 Q Okay. But it -- you knew at the time of</p> <p>4 August 15, 2020, that UBS had requested all</p> <p>5 information relating to the assets of HFP,</p> <p>6 CDO Fund and SOHC, correct?</p> <p>7 A I don't know that I ever saw UBS requests</p> <p>8 that -- whenever these informal requests were that</p> <p>9 predated the request for --</p> <p>10 Q I didn't ask you if you ever saw them. I</p> <p>11 said, did you know, prior to the formal requests</p> <p>12 that were marked as Exhibit 69, that UBS had</p> <p>13 requested all information related to the assets,</p> <p>14 both current and historical, for SOHC, CDO Fund</p> <p>15 and HFP?</p> <p>16 A I knew that UBS certainly was asking for a</p> <p>17 lot of information, but in terms of exactly how</p> <p>18 you phrased it just now, I don't remember that</p> <p>19 part. But UBS was certainly asking for a lot of</p> <p>20 information and then that's what me and Mr. Demo</p> <p>21 spoke about, is to kind of how to satisfy that.</p> <p>22 Q Was this -- Mr. Ellington says that a</p> <p>23 large majority of your efforts were based on</p> <p>24 educated guess work, but at the time, you and he</p> <p>25 both knew that all the assets that CDO Fund and</p>

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<p>325</p> <p>1 HFP had, had been attempted to be transferred to 2 Sentinel in 2017, correct? 3 MS. SMITH: Objection, form. 4 A With respect to the assets that had been 5 sitting in those SOHC and CDO Fund in May of 2009, 6 most of those weren't the subject of the 2017 7 transfer and there was a lot of -- educated guess 8 work is probably not the right way to say it. We 9 were gathering as many documents as we could to 10 try to figure out what had happened to those 11 assets. 12 BY MR. CLUBOK: 13 Q At the time Mr. Ellington made the 14 statement about an educated guess, you knew that 15 all the assets that CDO Fund and HFP had had been 16 attempted to be transferred to Sentinel in 2017, 17 correct? 18 MS. SMITH: Objection to form. 19 A I knew that substantially all of the 20 assets they had in August of 2017 had been 21 transferred in August of 2017, but that's not 22 necessarily the same as what was there in 2009. 23 BY MR. CLUBOK: 24 Q I didn't ask you about that yet. 25 MR. CLUBOK: I'm going to move to strike</p>	<p>327</p> <p>1 correct? 2 A I knew that the assets -- substantially 3 all of the assets that they had owned in August of 4 2017 had been transferred in -- or attempted to be 5 transferred in 2017. 6 Q And Mr. Ellington knew that too, correct, 7 when he wrote this e-mail? 8 A Mr. Ellington and Mr. Klos knew that, 9 both. 10 Q Okay. And also you knew that Sentinel -- 11 you knew in August 2020, that Sentinel was at 12 least partially owned by Mr. Ellington, correct? 13 A I actually didn't know that, no. 14 Q Okay. But Mr. Ellington certainly knew 15 that at the time, correct? 16 MS. SMITH: Objection, form. 17 A You'll have to ask Mr. Ellington what he 18 knows. I don't -- I don't know that Mr. Ellington 19 owns any part of Sentinel. I know he's related to 20 it in some way, but I don't know if he owns it. 21 BY MR. CLUBOK: 22 Q Oh, you don't know if Mr. -- you don't 23 know, sitting here today, if Mr. Ellington has any 24 economic interest, direct or indirect, in 25 Sentinel?</p>
<p>326</p> <p>1 that part as nonresponsive. 2 BY MR. CLUBOK: 3 Q I'm going to again ask you, hopefully try 4 to answer my question so we can finish this close 5 to on time. 6 A Okay. 7 Q I didn't say a word about 2009 yet. I may 8 move to that, but I want a clean answer to my 9 question. 10 When Mr. Ellington wrote this e-mail 11 that's reflected on the first page of Exhibit 70, 12 you knew at the time and he knew at the time that 13 substantially all of the assets of HFP and 14 CDO Fund had been transferred to an entity that he 15 partially owned in August of 2017, correct? 16 MS. SMITH: Objection, form. 17 A I can't give you a clean answer to that 18 question, sir. There are -- if you want to break 19 it up into parts, I'm happy to address it. 20 BY MR. CLUBOK: 21 Q Okay. At the time Mr. Ellington wrote the 22 e-mail that's reflected on the first page of 23 Exhibit 70, you knew that substantially all of the 24 assets of HFP and CDO Fund had been attempted to 25 be transferred to Sentinel in August of 2017,</p>	<p>328</p> <p>1 A No. 2 Q But you do know that Mr. Dondero has an 3 economic interest in Sentinel? 4 A So it's similar to SAS, right. I knew 5 that Mr. Dondero and Mr. Ellington had some 6 involvement with that entity. I didn't know 7 exactly what the structure or ownership was. I 8 knew that they had, essentially, involvement in 9 authority with respect to those entities. 10 Q You do know that Mr. Dondero has an 11 economic interest in Sentinel, correct? 12 A Actually, I don't. 13 Q Okay. Do you know if Mr. Sargent was made 14 aware that Mr. Dondero and Mr. Ellington had an 15 economic interest in Sentinel when he supposedly 16 made the determination that they were not 17 affiliates -- strike that. 18 Do you know whether or not Mr. Sargent 19 knew about Mr. Dondero and Mr. Ellington's 20 economic interest in Sentinel when he supposedly 21 made the determination you claim he made with 22 respect to Sentinel's status as an affiliate or 23 not an affiliate of Highland Capital? 24 MS. SMITH: Objection to form. 25 A I don't know if they have an economic</p>

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<p>329</p> <p>1 interest and I don't know what the content of 2 those conversations were, but I do know 3 Mr. Surgent's determination. 4 BY MR. CLUBOK: 5 Q Okay. But you don't know if he knew the 6 economic ownership interest that Mr. Dondero or 7 Mr. Ellington may or may not have had in Sentinel 8 at the time he was supposedly asked to make that 9 determination, correct? 10 A I don't know what he knew one way or 11 another. 12 Q I'm going to hand you what's been marked 13 as Exhibit 71. 14 (Deposition Exhibit 71 marked for 15 identification.) 16 BY MR. CLUBOK: 17 Q It's an e-mail from Mike Throckmorton to 18 you, copying David Klos and also to Chris Rice. 19 It's actually an e-mail exchange, I should say, 20 that begins with Chris Rice sending to you a 21 balance of roughly 363 million in the claims 22 account for CDO Opportunity Master as of 23 12/31/2018, and it goes back and forth here. Do 24 you see that? 25 A Yes.</p>	<p>331</p> <p>1 A Well, because for years, CDO Fund didn't 2 have any financials and so it just struck me as 3 unusual that they were doing anything with that 4 fund. It was very -- it was strange to me so I 5 asked. 6 Q And are these people, Mike Throckmorton 7 and Chris Rice who are copied on this exchange, 8 people that you went to when you were tasked with 9 helping to identify historical information about 10 the assets of CDO Fund? 11 A Throckmorton, I think yes. Rice, I don't 12 remember. 13 Q Did you direct Mr. Seery or Pachulski to 14 these people for assistance? 15 A Well, they were asking questions of 16 Mr. Klos, and Mr. Throckmorton responded to 17 Mr. Klos. So that wasn't my chain of command. 18 Q I'm going to -- so turning back, though, 19 to Exhibit 70, which is dated August 15, 2020. 20 You say at that time you didn't know -- did you 21 know at that time that UBS was asking for all 22 information relating to the assets, both current 23 and historical, for HFP, SOHC and CDO Fund? 24 MS. SMITH: Objection, form. 25 A I think my prior testimony is that I knew</p>
<p>330</p> <p>1 Q And you ultimately say that the CDO Fund 2 number should be about 530 million which accounts 3 for the accrued interest, correct, on the first 4 page? 5 A I think that was reflective of the 6 judgment that had been handed down by the Court. 7 Q Right. So you knew as of -- obviously 8 knew as of July 16, 2020, that CDO Fund had a 9 judgment against it totaling approximately 10 \$530 million including interest, correct? 11 A Yes. 12 Q And you asked why they were doing 13 financials for CDO Fund and you were told it was 14 for tax purposes, correct? 15 A Where did I ask that? 16 Q In the -- your e-mail on page -- the first 17 page of Exhibit 71. 18 MS. SMITH: Review the exhibit. 19 BY MR. CLUBOK: 20 Q Look at the first page. Do you see where 21 it says -- where you give the fund number, and 22 then you say: However, more generally, why are we 23 doing financials for CDO Fund at all? 24 A Yes, I see that. 25 Q Why did you ask that question?</p>	<p>332</p> <p>1 UBS wanted a lot of information, but that exact 2 characterization I don't know. I don't remember. 3 BY MR. CLUBOK: 4 Q In words or substance, you knew that the 5 gist of what UBS had been looking for for at least 6 weeks, if not months prior to this, was 7 information about the assets that CDO Fund, SOHC 8 and HFP had both then and historically since 2009; 9 isn't that true? 10 MS. SMITH: Objection. He answered that 11 he didn't remember. 12 A I mean, I -- 13 MR. CLUBOK: Move to -- look, I -- please 14 don't start making speaking objections just 15 because it's getting late. 16 BY MR. CLUBOK: 17 Q I'm asking you a slightly different 18 question and I'm saying, didn't you understand, as 19 of August 15, 2020, that the gist of requests that 20 UBS had made at least weeks before, if not months 21 before, was to get whatever information was 22 available about the assets of CDO Fund, HFP and 23 SOHC, both currently and historically since 2009; 24 isn't that true? 25 A I knew -- I knew UBS was asking for a lot</p>

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<p>333</p> <p>1 of information about what happened to the assets 2 in those funds and then we went through an 3 iterative process between myself and Mr. Demo to 4 determine what it was that we were going to send, 5 but I -- I don't recall ever seeing UBS's 6 requests. Really I was getting my tasking orders 7 from Pachulski. 8 Q Okay. I'm going to hand you what's been 9 marked as Exhibit 72. 10 (Deposition Exhibit 72 marked for 11 identification.) 12 BY MR. CLUBOK: 13 Q It's an e-mail from ten days earlier, 14 August 5th, 2020, from you to Jim Seery, copying 15 Brad Sharp, James Romey, David Klos, and the 16 subject is UBS Supplemental Information Request. 17 Do you see that? 18 A I do. 19 Q And this -- UBS had made information 20 requests and then they had made supplemental 21 information requests, and this is all before the 22 more formal document requests that we previously 23 reviewed, correct? 24 MS. SMITH: Please let him review the 25 document.</p>	<p>335</p> <p>1 Do you see that? 2 A Yes. 3 Q And so when you gave this answer, did you 4 know what the current requests were? When you 5 wrote this e-mail, at that -- even if you don't 6 remember now, this is almost a year ago, but at 7 the time, had you reviewed UBS's then current 8 request for information when you advised Mr. Seery 9 that they supposedly exceeded what UBS was 10 entitled to under the special master order? 11 A I apparently knew that you were asking for 12 documents from 12/31/07 through 12/31/19. 13 Q Did you know what the current requests for 14 information were at that time when you wrote this 15 e-mail, yes or no? 16 A I don't recall if I did one way or 17 another. 18 Q Okay. And you go on to say: HFP and 19 CDO Fund informed their investors that they had 20 zero net asset values. 21 Do you see that? 22 A Yes. 23 Q And then you say you've been tracking the 24 assets through on SOHC and CDO Fund. Do you see 25 that?</p>
<p>334</p> <p>1 A I see that it says supplemental 2 information request. I was not interfacing with 3 UBS on these requests. I don't even remember 4 being sent them. 5 BY MR. CLUBOK: 6 Q That's not my question. Let's listen to 7 my question, please, and answer my question. 8 Isn't it true that UBS had made information 9 requests and supplemental information requests 10 with respect to the assets of HFP, CDO Fund and 11 SOHC all before the more formal document requests 12 that we reviewed earlier today? 13 A I don't have any personal knowledge of 14 those. 15 Q Okay. But on August 5th, 2020, you 16 were -- in response to an e-mail from James Seery, 17 the subject being, RE: UBS Supplemental 18 Information Request, you respond: UBS's current 19 requests for information exceed what it was 20 entitled to under the Special Master Discovery 21 Order (attached). 22 Do you see that? 23 A I do. 24 Q You said: UBS is asking for documents 25 from 12/31/07 through 12/31/19.</p>	<p>336</p> <p>1 A Right. That was the task that they had 2 put me on, was to track the assets from May of '09 3 forward. 4 Q Well, you talk about -- well, first of 5 all, every single asset that it -- had been there 6 in May of '09 that was still there in August 17th, 7 you knew exactly what had had happened to those 8 assets, right? 9 MS. SMITH: Objection to form. 10 A Actually, I didn't. 11 BY MR. CLUBOK: 12 Q Well, you knew that any assets that were 13 there in May of 2009 that were still there in 14 August of 2017, had been transferred, pursuant to 15 that e-mail that you were copied on, to Sentinel 16 for consideration for the ATE policy, didn't you? 17 A There were only two such assets and I 18 researched extensively what happened to both of 19 those assets. And so I don't necessarily agree 20 that they were effectively transferred by the 21 ATE policy -- whatever -- whatever it is that 22 people did, it didn't work, I think. 23 Q What were those two assets that you're 24 talking about? 25 A The NV -- well, sorry, let me rephrase.</p>

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<p style="text-align: right;">337</p> <p>1 The interest in Multi Strat, at whichever level it 2 existed and the records are inconsistent on that, 3 and that creates another problem because at one 4 level, equity interest got extinguished -- 5 Q We'll come to that. 6 A -- and then Greenbriar -- 7 Q So you had extensively researched 8 CDO Fund's interest in Multi Strat and Greenbriar 9 and you came to the conclusion that those assets 10 had not been properly transferred to Sentinel as 11 part of the August 2017 transaction, correct? 12 A Can we break it up into a Greenbriar 13 question and a Multi Strat question? Would that 14 be possible? 15 Q Sure. With respect to Greenbriar, you 16 concluded that Greenbriar's -- the assets that 17 CDO Fund held in Greenbriar had never been 18 transferred to Sentinel, correct? 19 A I concluded that the -- so I was tracking 20 title of assets, and the title of what were 21 preference 2 shares issued by Greenbriar never 22 left CDO Fund's possession. And so this -- when I 23 say I was tracking assets, I was tracking title to 24 assets. That's what this whole process was, was 25 tracking basically if it's -- if you have to</p>	<p style="text-align: right;">339</p> <p>1 and said this one I can't tell you, this one I 2 don't know about. 3 Q Not sure what? Not sure whether or not 4 they were transferred to Sentinel? That's my only 5 question. I want to know if you're saying that 6 you were not sure one way or the other whether 7 CDO Fund's interest in Multi Strat, if any, were 8 ever transferred to Sentinel. Were you either 9 sure they weren't or were you sure they were or 10 were you not sure? 11 MS. SMITH: Objection, form. 12 A I was not sure, and I can explain why. 13 BY MR. CLUBOK: 14 Q I didn't ask for that. So you thought 15 there was -- based on all the research you did, 16 you thought there was some chance that some assets 17 that CDO Fund held in Multi Strat had been 18 transferred to Sentinel but you were not sure; is 19 that correct? 20 A That was one of the possibilities. 21 Q And did you ever say that possibility, in 22 words or substance, to Greg Demo? 23 A I didn't give him any of the 24 possibilities, I just told him I can't figure out 25 what's going on with this asset.</p>
<p style="text-align: right;">338</p> <p>1 deliver them to UBS tomorrow, how do you do that, 2 who do you call. And that's why title was the 3 important inquiry that I was being asked. 4 Q So with respect to Greenbriar, title to 5 the assets were never transferred to Sentinel from 6 CDO Fund, correct? 7 A As far as I'm aware, the title -- as far 8 as my research showed, the title to the Greenbriar 9 Class 2 preference shares were never transferred 10 from CDO Fund to Sentinel. 11 Q And are still to this day, as far as you 12 know -- or at least as of the time you left 13 Highland, owned by CDO Fund, correct? 14 A They're titled to CDO Fund. I believe 15 that's the right answer. 16 Q Okay. And with respect to the assets in 17 Multi Strat, you believed, at least as of the time 18 you left Highland, that the title to those 19 assets -- that there had been -- strike that. 20 That CDO Fund had not transferred any 21 interest that it may have had in Multi Strat to 22 Sentinel, correct? 23 A Well, I actually wasn't sure, and to this 24 day I'm not sure. And I actually highlighted in 25 green on the chart that I was making for Mr. Demo</p>	<p style="text-align: right;">340</p> <p>1 Q But you didn't tell him that one of the 2 reasons you couldn't figure it out is because 3 there was a possibility that that asset had been 4 transferred to Sentinel? You didn't say that in 5 words or substance to Greg Demo, correct? 6 A That actually wasn't one of the reasons I 7 couldn't tell. That wasn't one of the reasons I 8 didn't know. 9 Q You did not tell Mr. Demo that there was 10 some possibility that assets that were held by 11 CDO Fund had been transferred -- strike that. 12 You never told anyone at the Pachulski 13 firm that assets that CDO Fund held with respect 14 to Multi Strat may have been transferred to 15 Sentinel, correct? 16 A That's correct. 17 Q Why not? 18 A So I'm at the point where -- well, let me 19 rephrase. In my research I arrived at at least a 20 preliminary conclusion, that that asset had been 21 extinguished back in 2011. 22 Q Did you share that conclusion with 23 Mr. Demo? 24 A I told him that that was a concern of mine 25 and that I was still trying to track it down and I</p>

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<p>341</p> <p>1 told him that was my preliminary conclusion.</p> <p>2 Q When did you tell him that?</p> <p>3 A It was around this time period.</p> <p>4 Q When?</p> <p>5 A It was in August of 2020.</p> <p>6 Q And did you tell him to share that</p> <p>7 information with UBS?</p> <p>8 A I didn't give him any instructions on what</p> <p>9 to share with UBS one way or another.</p> <p>10 Q Did you advise ever affirmatively that</p> <p>11 they should not share that information with UBS?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 A I don't remember -- I don't remember if we</p> <p>14 talked about it. I do remember that I was</p> <p>15 concerned that if we didn't have the answer, that</p> <p>16 was going to create more -- that if we gave a</p> <p>17 partial -- well, let me start over.</p> <p>18 I was concerned that if we told them -- if</p> <p>19 we told you where we were, that was going to</p> <p>20 create more problems because we had uncertainty</p> <p>21 and that was not an easy thing to say.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q My question is did you ever affirmatively</p> <p>24 advise them not to share information about</p> <p>25 CDO Fund's possible ownership interest in</p>	<p>343</p> <p>1 Multi Strat position being written off.</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q And if you look, you can see then on the</p> <p>5 first page of the attachment that write-off</p> <p>6 occurred August 11th, 2017. Do you see that?</p> <p>7 A I do see that's what it says.</p> <p>8 Q And you recall, of course, in your</p> <p>9 Appendix 1, there was an amount identified for</p> <p>10 CDO Fund's interest in Multi Strat as of April</p> <p>11 2017, right?</p> <p>12 MS. SMITH: Objection, form. What are you</p> <p>13 referring to on the exhibit?</p> <p>14 MR. CLUBOK: Let me restate the question.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q You know that August 11, 2017, was the</p> <p>17 date that the transfers of substantially all of</p> <p>18 CDO Fund's assets were made to Sentinel?</p> <p>19 A I knew that it took place in August of</p> <p>20 2017. I didn't know the exact date, but yes.</p> <p>21 Q Right. So you directed Mr. Seery and</p> <p>22 Mr. Ellington -- sorry, you directed Mr. Seery and</p> <p>23 Mr. Demo to an attached that showed the</p> <p>24 Multi Strat position being written off on</p> <p>25 August 11th, 2017, right?</p>
<p>342</p> <p>1 Multi Strat with UBS?</p> <p>2 A I don't remember one way or another.</p> <p>3 Q Let's mark a document as Exhibit 73.</p> <p>4 (Deposition Exhibit 73 marked for</p> <p>5 identification.)</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q I'm going to mark an e-mail from you to</p> <p>8 Mr. Seery, dated August 21st, as Exhibit 73. And</p> <p>9 it's got an attachment that says Screenshot:</p> <p>10 WSO_Trade_No.9684001.pdf. We'll have the cover</p> <p>11 e-mail and the two-page attachment marked</p> <p>12 collectively as Exhibit 73.</p> <p>13 And at the bottom of this e-mail chain,</p> <p>14 you say to Jim Seery, copying Scott Ellington and</p> <p>15 Greg Demo and James Romey, that here's a revised</p> <p>16 package of UBS documents without mention of</p> <p>17 Multi Strat.</p> <p>18 MS. SMITH: Can you read that?</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And you at the top of the e-mail say:</p> <p>23 All - I do -- and in all caps, underlined -- NOT</p> <p>24 want to include this in the UBS package until we</p> <p>25 discuss, but please see attached showing the</p>	<p>344</p> <p>1 A I see that.</p> <p>2 Q And did you also affirmatively say, oh,</p> <p>3 and by the way, that was the time when</p> <p>4 substantially all of CDO Fund's assets, including</p> <p>5 any interest it may have had in Multi Strat, were</p> <p>6 attempted to be transferred to Sentinel? Did you</p> <p>7 say that, in words or substance, in any way to</p> <p>8 Mr. Seery or Mr. Demo in connection with the</p> <p>9 statement directing them to the attached that</p> <p>10 showed the Multi Strat position being written off?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A At -- I did not mention Sentinel in the</p> <p>13 context of these documents. I was still</p> <p>14 researching why the financial records showed what</p> <p>15 they showed.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Well, but you're still researching why the</p> <p>18 records showed a write-off on the exact day in</p> <p>19 August of 2017 when you had been told that all the</p> <p>20 assets of CDO Fund were supposed to be transferred</p> <p>21 to Sentinel for an after-the-event insurance</p> <p>22 policy, correct?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 A My concern is that that write-off should</p> <p>25 have actually taken place much, much earlier.</p>

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<p>345</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q I understand what you're saying now, but</p> <p>3 the fact is you did know that that write-off that</p> <p>4 you referred them to was the date that all of the</p> <p>5 assets of CDO Fund were supposed to be transferred</p> <p>6 to Sentinel, correct?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A I knew that the ATE transfer had taken</p> <p>9 place on or about August 2017.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And when you referred them to this</p> <p>12 document that showed a write-off for this asset</p> <p>13 related to Multi Strat as of that date, you failed</p> <p>14 to mention that, correct?</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 A I did not mention that.</p> <p>17 MR. CLUBOK: Let's go off the record.</p> <p>18 MS. SMITH: Good. Because I need to take</p> <p>19 a break.</p> <p>20 THE VIDEOGRAPHER: We are off the record</p> <p>21 at 7:04 p.m.</p> <p>22 (Recess taken from 7:04 p.m. CDT to</p> <p>23 7:25 p.m. CDT)</p> <p>24 THE VIDEOGRAPHER: The time is 7:25 p.m.</p> <p>25 We are back on the record.</p>	<p>347</p> <p>1 supposedly traded and settled August 11th, 2017,</p> <p>2 correct?</p> <p>3 A It shows that it was written off on that</p> <p>4 date. Any entry in WSO generates a "trade ticket"</p> <p>5 even if it's not technically a trade.</p> <p>6 Q But, in fact, it says, Trade Type, Sell,</p> <p>7 on the document, correct?</p> <p>8 A It says sell because it's -- well, because</p> <p>9 it's coming from the perspective of Highland</p> <p>10 CDO Fund. So, yes, that's what it says.</p> <p>11 Q Then it says the counterparty is just a</p> <p>12 write-off, supposedly, pursuant to this document,</p> <p>13 right?</p> <p>14 A It does say that.</p> <p>15 Q But, in fact, following August 11th, 2017,</p> <p>16 Sentinel appeared as a significant redeemer in</p> <p>17 Multi Strat; isn't that true?</p> <p>18 A I'm sorry, after which date, sir?</p> <p>19 Q Following -- after -- at some point after</p> <p>20 August of 2017, Multi Strat started showing up as</p> <p>21 one of the significant redeemers in the interest</p> <p>22 in Multi Strat, correct?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 A I'm sorry, you lost me, sir.</p> <p>25 MR. CLUBOK: Beg your pardon?</p>
<p>346</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Mr. Leventon, referring back to</p> <p>3 Exhibit 73, this was the cover sheet e-mail on the</p> <p>4 first page that -- in which you said you did not</p> <p>5 want to include certain information in the UBS</p> <p>6 package until you discussed, and then you referred</p> <p>7 Mr. Seery and Mr. Demo and Mr. Romey, copying</p> <p>8 Scott Ellington, to the attachments showing the</p> <p>9 Multi Strat position being written off in August</p> <p>10 of 2017. Do you see that?</p> <p>11 A Sorry, I'm losing a little focus. I think</p> <p>12 what you represented is what the document says.</p> <p>13 Q Right.</p> <p>14 A Yeah.</p> <p>15 Q And so we looked at the first attachment</p> <p>16 to Exhibit 73, but I want to refer you to the</p> <p>17 second attachment to Exhibit 73, which you --</p> <p>18 which according to the attachments is a WSO Trade</p> <p>19 No. 9684001. Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And that shows -- what is this document?</p> <p>22 A So this is what's called a WSO trade</p> <p>23 ticket.</p> <p>24 Q And this document reflects the fact that</p> <p>25 the interest in Multi Strat for CDO Fund was</p>	<p>348</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q At some point after August of 2017,</p> <p>4 Sentinel shows up on a list of redeemers with</p> <p>5 respect to the Multi Strat partnership, correct?</p> <p>6 A At some point Sentinel does show up as a</p> <p>7 redeemer from Multi Strat.</p> <p>8 Q And I'm going to hand you what's been</p> <p>9 marked as Exhibit 74, which is a two-page cover</p> <p>10 e-mail with an attachment that says Request for</p> <p>11 Redemption of Shares, that purports to be with</p> <p>12 respect to an entity called Sentinel Reinsurance</p> <p>13 to Highland Multi Strategy Credit Fund.</p> <p>14 (Deposition Exhibit 74 marked for</p> <p>15 identification.)</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Do you see Exhibit 74? Do you see</p> <p>18 Exhibit 74, sir?</p> <p>19 A Yes. I haven't had a chance to review it</p> <p>20 yet.</p> <p>21 Q Well, I just want to ask you something</p> <p>22 simple. If you look at the request for redemption</p> <p>23 of shares for Sentinel Reinsurance, have you ever</p> <p>24 seen this request before today, as far as you</p> <p>25 know?</p>

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<p>349</p> <p>1 A I don't recall ever having seen this 2 before. 3 Q Did you know that Sentinel Reinsurance was 4 listed as a redeemer with respect to Multi Strat? 5 A I think I did, yes. 6 Q And did you ever, in words or substance, 7 convey any issues that you might have had with 8 respect to Sentinel's supposed stake in 9 Multi Strat based on any of the work you did? 10 A I'm sorry, I don't understand that 11 question, sir. 12 Q Did you ever talk to either the directors 13 or the Pachulski firm about Sentinel's redemption 14 interest in Multi Strat? 15 A I know that there were extensive 16 discussions about redeemers in that fund, but I 17 don't remember if there was a specific discussion 18 about Sentinel. 19 Q Did you ever mention, in words or 20 substance, that Sentinel had some connection to 21 Jim Dondero or Scott Ellington, to either the 22 directors or the Pachulski firm? 23 A I never spoke to them about it one way or 24 another. 25 Q And did you ever -- in the course of that</p>	<p>351</p> <p>1 who they are, but they weren't affiliated with 2 Highland or Dondero or anybody in any way. 3 Q So you're saying based on the research 4 you've done, any interest that Sentinel believes 5 they obtained in August of 2017 from CDO Fund in 6 Multi Strat is nonexistent? 7 A That was my preliminary conclusion. 8 Q And did you share that specific conclusion 9 with Mr. Demo? 10 A The conclusion I shared with him was that 11 I thought that those interests may have been wiped 12 out in 2011 and that that was my preliminary 13 conclusion. 14 Q And did you ever tell anyone at Sentinel 15 that that's the conclusion you reached, that what 16 they have on their books as a redemption interest 17 is really worthless as far as you believe? 18 A I don't generally talk to any -- I'm 19 trying to -- I don't want to say at Sentinel 20 because that's characterizing what people's roles 21 are, but I do remember at one point telling 22 Mr. DiOrio this may not exist. 23 Q When was that? 24 A You may not own this. 25 Q When did you tell Mr. DiOrio that?</p>
<p>350</p> <p>1 research you did with respect to CDP Fund's 2 interest, if any, in Multi Strat, to the extent 3 that they were -- one of the conclusions you came 4 to was that they may have been extinguished in 5 2011 or '12? 6 A Yes. 7 Q How were they extinguished? By a sale? 8 By them just disappearing? By redemption? How? 9 A Restructuring. 10 Q What do you mean? 11 A So if the interests were -- if the limited 12 partnership interest was at the level that we 13 colloquially called MVCDO, my understanding was 14 that MVCDO had issued notes prior to the financial 15 crisis and then it went through a restructuring 16 transaction sometime in 2011, where the notes 17 essentially wiped out the equity holders and then 18 noteholders became the new equity of MVCDO and 19 then, I think, they had to be essentially redeemed 20 out in cash over time. 21 Q Who redeemed out the cash interest in 22 Multi Strat? 23 A The noteholders. 24 Q Who were they? 25 A Third-party investors. I don't remember</p>	<p>352</p> <p>1 A Would have been August or September 2020. 2 Q Around the time you were tasked with 3 tracking down what happened with CDO Fund's 4 assets? 5 A Yes. 6 Q And so you -- why did you go to Mr. DiOrio 7 to share this belief you had with respect to 8 Sentinel's interest or lack thereof in 9 Multi Strat? Why Mr. DiOrio, of all the people 10 you could have told? 11 A I believe he was on the board of Sentinel. 12 Q You knew he was a director at the time of 13 Sentinel, right? 14 A Actually, I didn't. I knew he was -- had 15 day-to-day responsibility kind of for Sentinel, 16 but I don't actually know he was a director. 17 Q You just imagined right now when you said 18 you knew he was on the board? 19 A Well, I know today that he was on the 20 board. 21 Q How do you know today? 22 A Really through this discovery and lawsuit 23 process. 24 Q Who told you? 25 A I don't recall. I may have gotten it from</p>

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<p>353</p> <p>1 Mr. DiOrio, I may have gotten it from counsel who 2 got it from Mr. DiOrio. 3 Q So you've spoken with Mr. DiOrio about 4 this process? 5 A About this deposition? 6 Q About this litigation -- this adversary 7 proceeding. 8 MS. SMITH: Objection to form. 9 A No, what I said was I either found out 10 that he was a director -- it wasn't -- I mean, I 11 either found out that he was a director from him 12 or I found out from outside counsel. 13 BY MR. CLUBOK: 14 Q You spoke -- 15 MS. SMITH: Objection, I don't want him to 16 reveal privileged information. 17 BY MR. CLUBOK: 18 Q I'm not asking about what you found out 19 from your lawyers. But you have spoken with 20 Mr. DiOrio about this -- about the subject of this 21 adversary proceeding, correct? 22 A I'm trying to parse out -- well, I'm 23 trying to parse out what conversations I would 24 have had with him -- I mean, really, the 25 conversations I would have had with him, if any,</p>	<p>355</p> <p>1 A That's right. 2 Q And so you went to him -- he didn't -- did 3 he task you with reporting to him your views about 4 Sentinel's redemption interest in Multi Strat? 5 A No. 6 Q But you affirmatively made the choice to 7 go tell him that, you thought that was information 8 that was important for him to know, correct? 9 A I decided to tell him. 10 Q And you didn't make a similar decision to 11 tell Mr. Seery or the Pachulski lawyers about that 12 subject at the time, correct? 13 A I did tell them the same thing at the 14 time. 15 Q No, you didn't tell them that Sentinel's 16 interest -- redemption interest in Multi Strat 17 might be worthless, like you told Mr. DiOrio, 18 correct? 19 MS. SMITH: Objection to form. 20 A We -- I don't think we ever talked about 21 Sentinel's redemption interest. 22 BY MR. CLUBOK: 23 Q Right. So you told Mr. DiOrio that the 24 interest that Sentinel believed it had purchased 25 from CDO Fund that was on the books as a</p>
<p>354</p> <p>1 would have been including our lawyers. 2 Q You had a conversation with Mr. DiOrio 3 with your lawyers present? 4 A I honestly don't remember, sir. I don't 5 remember how I found out. It was one of those two 6 ways. 7 Q Did you have any conversations with any 8 other witnesses with your lawyers present about 9 the subject matter of this adversary proceeding? 10 A We spoke about motions that were pending. 11 Q Did you talk about the substance of this 12 adversary proceeding with other individuals 13 involved in this proceeding in your lawyers -- in 14 one group meeting? 15 A No. We would have -- our group meetings 16 would have addressed pending procedural motions. 17 Q Okay. But Mr. DiOrio at some point during 18 one of those group meetings disclosed that he was 19 a director of Sentinel? 20 A Again, I don't recall if he disclosed that 21 or if I was told that by my outside counsel. 22 Q But back -- so back in 2017 -- sorry, back 23 in 2020, you didn't know he was the director, you 24 just understood he had day-to-day responsibility 25 for Sentinel at the Highland organization?</p>	<p>356</p> <p>1 redemption interest might be worthless in your 2 view, or words to that effect, correct? 3 A I think that's fair. 4 Q But you didn't tell that same information 5 to Mr. Seery or any of the Pachulski lawyers, 6 correct? 7 A I think I more talked about -- 8 Q Is that yes or no? I didn't ask what you 9 more talked about. 10 A Fair enough. 11 Q I just want to ask about this. 12 A I didn't talk about Sentinel at all with 13 the Pachulski lawyers. 14 Q Even though you affirmatively went to 15 Mr. DiOrio to tell him that, correct? Correct? 16 A I did not speak to the Pachulski lawyers 17 about Sentinel, that I recall. 18 Q Okay. Getting back to subject we talked 19 about earlier today -- oh, you said you had 20 discussions with Mr. DiOrio about the ATE policy. 21 You said there were two people you've ever spoken 22 to about it, Mr. DiOrio and Mr. Ellington, right? 23 A That's not 100 percent accurate. 24 Q Okay. What is -- why is that not 25 accurate?</p>

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<p>357</p> <p>1 A I mean, I had already spoken to 2 Mr. Sevilla about the ATE policy. 3 Q Okay. But Mr. DiOrio, what, if anything, 4 did you talk to him about with respect to the 5 ATE policy, other than this subject? 6 A On an annual basis, we would talk to 7 Beecher Carlson and he would set up those 8 conversations. 9 Q On an annual basis, meaning 2017, 2018, 10 2019 and 2020? 11 A I think that's right, yes. 12 Q How about 2021, before you were 13 terminated? 14 A I don't think so. 15 Q Who is responsible for speaking to Beecher 16 Carlson in 2021 about the policy? 17 A I don't know. Not me. 18 Q Did you ever suggest to anyone, in words 19 or substance, that they should make a claim on a 20 policy once you learned about the judgment in the 21 New York litigation? 22 A I don't remember if I spoke -- if I did, 23 it would have been with Mr. Ellington. 24 Q And did you suggest, in words or 25 substance, that Mr. Ellington should cause a claim</p>	<p>359</p> <p>1 that was being contemplated that we talked about 2 in April of 2017, you know the settlement that had 3 the first step being purchase a \$100 million 4 ATE policy from Sentinel using substantially all 5 of the assets of CDO Fund, HFP -- remember that 6 discussion? 7 A I remember we had a discussion around a 8 document from April of 2017 related to settlement 9 analysis. 10 Q Prior to that contemplated transaction, 11 was there another potential transaction that would 12 have resulted in a settlement whereby there would 13 be some new company established that would 14 purchase claims from UBS as part of a settlement 15 structure that you were involved in helping draft? 16 A That would buy claims from UBS? 17 Q Yeah. That as part of a settlement would 18 result in some new company in the Caymans 19 purchasing claims from UBS and then settling those 20 claims with the funds so that the funds would end 21 up still insolvent to avoid the tax liability? Is 22 that a concept that you ever were involved in 23 discussing with anyone? 24 A Not that I recall. 25 Q Anyone ever raise the fact that the -- all</p>
<p>358</p> <p>1 to be made on the ATE policy? 2 A I may have. I just don't remember. 3 Q You don't remember at all whether you did 4 or didn't? 5 MS. SMITH: Objection, form. 6 BY MR. CLUBOK: 7 Q That's what you're saying? 8 A That's correct. 9 Q Did you believe that he should -- strike 10 that. 11 Did you believe that a claim should have 12 been made on the ATE policy at any point while you 13 were still employed with Highland? 14 A I don't know that I came to a view one way 15 or another. 16 Q You might have, but you just don't know if 17 you did or you didn't? 18 A I don't remember -- I might have. I don't 19 remember. 20 Q And did you ever share any view about 21 whether a claim should be made on the policy with 22 any of the independent directors or with the 23 Pachulski lawyers? 24 A No. 25 Q Prior to April -- prior to the transaction</p>	<p>360</p> <p>1 these ideas of transferring assets were 2 potentially illegal efforts to avoid taxes? 3 MS. SMITH: Objection to form. 4 BY MR. CLUBOK: 5 Q Did anyone ever raise that possibility in 6 any of the discussions you had? 7 A No, no one ever said anything like that. 8 Q Okay. And I believe this may be the last 9 topic, I think. You -- we asked you earlier about 10 Skyview Legal PC. Asked you about whose idea it 11 was to start it. Can you answer that question 12 now? 13 A Yes. It was -- the idea for it came from 14 a gentleman by the name of Jim McCormack, who 15 is -- was a legal ethics counsel that we retained. 16 Q Why? 17 A Skyview Group wanted to determine if it 18 was providing legal services. And if it was 19 providing legal services, if that was appropriate 20 under its current structure or whether or not it 21 needed to essentially create an affiliated law 22 firm or a dedicated law firm in order to avoid 23 unauthorized practice of law issues. 24 Q Okay. And you're the sole director at 25 this point of Skyview Legal PC?</p>

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<p>361</p> <p>1 A I am, I think. We just formed it like a 2 couple weeks ago. 3 Q Okay. And then I do have one last 4 document that my colleague handed me that I'm 5 going to just ask you about, and that's 6 Exhibit 75. 7 (Deposition Exhibit 75 marked for 8 identification.) 9 BY MR. CLUBOK: 10 Q It's a one -- it's a double-sided, 11 single-page document that reflects an e-mail 12 exchange that starts with an e-mail from me to 13 Scott Ellington, copying some other counsel, which 14 is then forwarded to you and Scott Ellington and 15 Scott Ellington confirms approved. 16 MS. SMITH: What number are we on? 17 MR. CLUBOK: 75. Thank you. 18 MS. SMITH: I missed 74. 19 MR. CLUBOK: Exhibit 75. 20 BY MR. CLUBOK: 21 Q And this is an e-mail chain that is from 22 December 2nd, 2019, the subject, Confirmation of 23 our understanding. And I asked Mr. Ellington to 24 respond confirmed if you agree that it reflects 25 our discussion. And the first item is that we</p>	<p>363</p> <p>1 A I think that's a fair -- I'm just reading 2 bullet point 2, but that sounds like a fair 3 characterization of that bullet point. 4 Q Okay. And Scott -- Angela Somers sends an 5 e-mail to you and Scott Ellington, asking to 6 confirm that you've agreed to the terms below 7 since we were not involved in these discussions 8 and we assumed you've worked with bankruptcy 9 counsel on the stay relief and possible claim. 10 Do you see that? 11 A Yes. 12 Q And then Mr. Ellington writes back, yes, 13 approved, in response to that question from 14 Ms. Somers. Do you see that? 15 A Yes. 16 Q Was that truthful what Mr. Ellington said 17 in that e-mail? 18 MS. SMITH: Objection, form. 19 BY MR. CLUBOK: 20 Q As far as you knew at the time? 21 A That he had agreed to the terms below? 22 Q Yes. 23 A I had no idea. I wasn't involved in those 24 conversations between you and Mr. Ellington. 25 Q Did you know whether he had worked with</p>
<p>362</p> <p>1 were going to tell the Court that we are committed 2 to having good faith settlement discussions, and 3 we asked the Court to hold the opinion and the 4 attached judgment, the form of which we have 5 already agreed to and advised her of such during 6 our call, for another ten business days from today 7 with the possibility we'll extend further as 8 needed. 9 Do you see that? 10 A I do. 11 Q So you were aware that the Court had 12 already made a decision awarding roughly a billion 13 dollars in damages, at least as of December 2nd, 14 2019, although that had not yet been made public, 15 correct? 16 A Correct. 17 Q And we agreed also that we were going to 18 tell the Court that we planned to enter into the 19 attached stipulation, which was an agreed upon 20 request for relief from automatic stay, correct? 21 A Are you talking about bullet point 2? 22 Q Yeah. If a settlement could be resolved, 23 the parties were going to jointly request relief 24 from automatic stay according to this 25 understanding, correct?</p>	<p>364</p> <p>1 bankruptcy counsel on the stay relief and possible 2 claim? 3 A I didn't know one way or another. 4 Q Did you ask him whether or not what he 5 said was true on this e-mail that you were copied 6 on, or that was actually sent to you by Angela? 7 A No, I never asked him if his statement was 8 true or false. 9 Q Did you follow up at all? 10 A I saw no reason to follow up, so no, I 11 didn't. 12 Q As part of the good-faith settlement 13 discussions, do you know whether or not 14 Mr. Ellington ever disclosed that there was a 15 after-the-event insurance policy that could be 16 used to satisfy a judgment in the New York 17 litigation? 18 MS. SMITH: Objection to form. 19 A I wasn't part of Mr. Ellington's 20 conversations with you. I don't know. 21 BY MR. CLUBOK: 22 Q But you knew at the time that there was an 23 ATE policy that could be used to satisfy the 24 judgment that was about to be made public, 25 correct?</p>

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<p>365</p> <p>1 A I knew of the existence of the ATE policy,</p> <p>2 yes.</p> <p>3 Q Did you make any effort to disclose that</p> <p>4 to UBS?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 A I didn't -- I didn't talk to -- the only</p> <p>7 person that would be UBS would be you and I didn't</p> <p>8 talk do you about this.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q So you made no effort to disclose in any</p> <p>11 way to UBS through counsel that there was an</p> <p>12 ATE policy from Sentinel that could be invoked to</p> <p>13 pay up to roughly \$91 million or more with respect</p> <p>14 to the judgment in the New York litigation,</p> <p>15 correct?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I never -- I'm sorry, I got lost in who</p> <p>18 all the people were that I didn't speak to.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Okay. This is my last question, so I just</p> <p>21 want to -- I'll try to say this as simply as</p> <p>22 possible. I'll break it down.</p> <p>23 A Okay.</p> <p>24 Q You knew as of December 2nd, 2019, that</p> <p>25 the Court was about to enter judgment of roughly a</p>	<p>367</p> <p>1 in my face.</p> <p>2 Q I totally understand.</p> <p>3 Sir, in December of 2019, you understood</p> <p>4 that there was roughly 80 to \$100 million of</p> <p>5 insurance money available to the defendants in the</p> <p>6 New York litigation to either satisfy the judgment</p> <p>7 or settle the claims, correct?</p> <p>8 A I knew that there was 80 to \$100 million</p> <p>9 of insurance on the after-the-event policy with</p> <p>10 Sentinel so that, yeah, probably could be used to</p> <p>11 settle or pay some amounts to UBS.</p> <p>12 Q And did you ever, you ever cause that</p> <p>13 information to be transferred or communicated --</p> <p>14 sorry. Did you ever cause that information to be</p> <p>15 communicated to UBS in any way?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I did not -- I didn't -- did I cause that</p> <p>18 information to be communicated to UBS? I didn't</p> <p>19 instruct people what to tell UBS; they instructed</p> <p>20 me. So, no, I -- we never -- that never came up.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q And you knew at the time, that UBS was a</p> <p>23 creditor in the restructuring, correct?</p> <p>24 A You mean in the Highland bankruptcy?</p> <p>25 Q Sorry. You knew at the time that UBS was</p>
<p>366</p> <p>1 billion dollars, correct?</p> <p>2 A Yes.</p> <p>3 Q And you knew that there was an ATE policy</p> <p>4 that could be used to satisfy that judgment or to</p> <p>5 settle the remaining claims, correct?</p> <p>6 A I knew about the ATE policy and that it</p> <p>7 could be used to pay UBS some amounts.</p> <p>8 Q And you knew that the amount was roughly</p> <p>9 \$100 million, maybe minus the legal fees that you</p> <p>10 had already authorized to be paid, correct?</p> <p>11 A I don't think I knew the exact amount, no.</p> <p>12 Q But you knew it was in the neighborhood of</p> <p>13 \$100 million at the time?</p> <p>14 A My recollection is somewhere between 80</p> <p>15 and 100, but I wasn't sure where. It was clearly</p> <p>16 a big number.</p> <p>17 Q Okay. You understood that there was</p> <p>18 roughly 80 to \$100 million of insurance money</p> <p>19 available to either satisfy the judgment or to</p> <p>20 settle the claims that were the subject of the</p> <p>21 judgment in the New York litigation, correct?</p> <p>22 A Can you repeat that one more time? Sorry,</p> <p>23 the sun literally was right in my eyes.</p> <p>24 Q That is totally fine. This is really it.</p> <p>25 A I'm not trying to play games. The sun was</p>	<p>368</p> <p>1 a creditor in the Highland bankruptcy, correct?</p> <p>2 A Yes.</p> <p>3 MR. CLUBOK: That's all I have. Thank</p> <p>4 you.</p> <p>5 THE VIDEOGRAPHER: This concludes the</p> <p>6 videotaped deposition of Isaac Leventon. The time</p> <p>7 is 7:52 p.m. We are off the record.</p> <p>8 (Deposition concluded at 7:52 p.m. CDT)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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ACKNOWLEDGMENT OF DEPONENT

I, ISAAC D. LEVENTON, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct and complete transcription of the
testimony given by me and any corrections appear
on the attached Errata sheet signed by me.

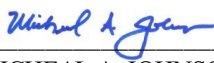
(DATE) (SIGNATURE)

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REPORTER'S CERTIFICATION

I, Micheal A. Johnson, the officer before
whom the foregoing deposition was taken, do hereby
certify that the foregoing transcript is a true
and correct record of the testimony given; that
said testimony was taken by me stenographically
and thereafter reduced to typewriting under my
direction; that reading and signing was requested;
and that I am neither counsel for, related to, nor
employed by any of the parties to this case and
have no interest, financial or otherwise, in its
outcome.

IN WITNESS WHEREOF, I have hereunto set my
hand this 27th day of July, 2021.



MICHEAL A. JOHNSON, RDR, CRR
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS